

Revised Edition



The Search for God's Law

Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī

BERNARD G. WEISS

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Writings of Sayf al-Dīn al-Āmidī*

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BERNARD G. WEISS

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*For my wife Felicia,
partner in the toil that produced this book*

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PREFACE TO THE REVISED EDITION

By the time this second edition of *The Search for God's Law* appears in print, eighteen years will have passed since the publication of the original edition. It should not be surprising that during a period of such length my thinking about at least some of the topics covered in the book should have changed. This is not to say that change is regrettable. Change can be part of maturing. In the years I worked on the texts Āmidī left behind, I was more or less locked into those texts and into Āmidī's intellectual world. It was just "text and I" for at least fourteen years—the years between completion of my doctoral program at Princeton University and my move to the University of Utah. Most of those intervening years were spent in Cairo. During summers we spent a great deal of time in Alexandria. I remember vividly the hours I spent with the texts, often sitting by the side of the pool at Schutz American School pondering a difficult passage while my two children splashed in the water, acquiring by the end of each summer a deep Nilotic tan.

When I say it was just "the text and I," I mean, among other things, that I had no lexical aids to work with most of the time. I occasionally would find help in Tahanawi's *Kashf al-zununfiistilahat al-funun* or some other technical dictionary. But this was not only of limited value in trying to determine the meaning of key Arabic terms; as an Arabic-Arabic lexicon it offered no help to decide on how to translate those terms into English. This amounted to my creating an English terminology for *usūl al-fiqh*. Of all the statements made by reviewers of the *Search*, I particularly appreciate one reviewer's describing it as "the labor of a lifetime." It was the central project of my career up until the book was published in 1992. In magnitude it was something I would only do once.

My interest in *usūl al-fiqh* and in Āmidī in particular began during my days as a graduate student. My dissertation was on a subject that had connections with *usūl al-fiqh*, although my research at that point did not include Āmidī among the authors studied. Yet even at that stage I was determined after completion of my degree to make *usūl al-fiqh* the central research

emphasis in the years that followed, and I already was beginning to eye Āmidī as an especially important author in that field. I had no idea how long it would take and no appreciation for the difficulties it would entail. There were times, as I was carrying on my work on the texts, that I felt I would never make it to the end. I myself wonder, years later, what it was that kept me determined to finish. I think that getting beyond the half-way point was crucial. Just as one when reaching forty or forty-five years of age begins to realize that the greater part of one's life lies behind one, so I realized that more than half of the labor was behind me. At that same point, too, I was beginning to feel at home in the texts and had made most of the terminological choices I needed to make. Once the book was out, my terminological choices and other kinds of research and conceptual choices had been, as it were, set in concrete for the book's readers. I am one of those writers who resists publishing their work simply because putting a book in print freezes it at a certain point in time while the mind of the author continues to be fluid and incapable of achieving finality.

When the University of Utah Press offered to republish the *Search* using copy-ready methods of reproduction that allowed primarily only simple corrections, I was happy to accept the offer in order to make the book available at a time when the demand for copies seemed to be sharply increasing. I myself have received requests for copies from people all over the world, and when the asking price for used copies on eBay and Amazon.com reached slightly over 1000.00 USD I began to see the merit of publishing the book more or less as is and leaving extensive re-writing to a possible third edition, provided I live long enough. The current high demand is not due to any intrinsic merit of the *Search* but is, I think, due to a burgeoning of interest in Āmidī throughout the Islamic world that may be more coincidental with my work than attributable to it. In fact, it so happens that as I write plans are under way in Turkey for an international conference on Āmidī in his home town of Amid (now called DiyarBekir).

The project of revising the entire book to accommodate changes in the way I think about much of its subject matter could become a never-ending process, and furthermore there are now many more scholars working in the area of *usūl al-fiqh* than were doing so when I started my work in the mid-sixties—scholars with excellent credentials, many of them lawyers by training with language abilities far surpassing my own.

Anyone choosing to read this book may find it useful to first read the epilogue, in which I present some of the changes I would make in the book as a result of the seventeen-year interim. These include both terminological and conceptual changes. It is by virtue of a new brief preface, corrections to the

text of the first edition, and the much awaited index that this may be deemed a revised edition and not simply a reprint.

Finally I wish to thank my fellow Altawiyun—both those who participated in the first Alta symposium in 1999 and those who participated in the later one in 2008. It is remarkable to me how *usūl al-fiqh* has become such a strong bond of friendship, and I shall always have fond memories of the lively, energetic discussions that so animated everyone that even around the dinner table the discussion simply would not come to a halt. I owe much to all of them, and whenever I find myself driving by the Alta Lodge on my way to the Albion Basin at the higher elevations above Salt Lake City I relive in my mind those exciting hours spent in disputation, creating an atmosphere that Āmidī himself surely would have found welcoming and congenial, had he been present.

PREFACE TO THE FIRST EDITION

This study is fundamentally expository. It is the result of years of grappling with difficult Arabic texts, and throughout those years I have always supposed myself to be in contact with the world of ideas inhabited by my author, Sayf al-Dīn al-Āmidī (d. 631/1233), and to be capable of expounding those ideas accurately and faithfully in relatively clear English. In working with Āmidī's writings I have found myself in a position similar to that of the mujtahid about whom he wrote. Like the mujtahid, I, too, have been struggling to let my texts convey to me meanings that are not of my own making or the product of the intellectual-historical situation in which I happen to be located. And I have felt successful, rightly or wrongly. I feel (not naively, I hope) that I have gotten to know rather well the mind of Āmidī and the complex dialectic in which he was involved. And I feel (again, not naively, I hope) that I have been able to capture the essence of his jurisprudential thinking in the prose that appears in the pages of this book.

At the same time, I am aware that Āmidī's world of ideas does not appear in the pages of this book in perfect transparency. I am very much a part of the product. One cannot expound without interpreting, and interpretation engages the interpreter as an active partner in the creation of meaning. Even when one attempts to expound ideas in the language of the texts with which one is working, one assumes this active posture. When the language of exposition is different from that of the texts, the activeness of the endeavor increases. How can one express in English the ideas of a medieval author who wrote in a very specialized kind of classical Arabic? Obviously, the lexical repertoire available to me is vastly different from that employed by Āmidī. I have been obliged to make a considerable variety of crucial terminological choices: the choices are clearly mine, and they affect the product profoundly.

These choices would have been necessary had I decided on translation rather than exposition as my way of working with Āmidī's writings. In exposition one opts for greater distance from the text and for greater personal space

within which to present the ideas one believes one finds in the text. So, along with the exercise of terminological choices comes a large measure of freedom in determining the shape of the discourse. This makes one all the more a partner in the creation of meaning. But I would insist that it is my texts' meaning—Āmidī's meaning—that emerges as uppermost in the pages of this book, even if clothed in phraseology and a flow of words and sentences that are of my making. To use the phrase made famous by Hans-Georg Gadamer: I would insist that between me and my texts there has occurred a merging of horizons.

Actually, the posture I take toward my texts varies from rather close exposition, at times bordering on paraphrase, to a much freer reflection upon what I find in the texts. Not infrequently, I move beyond what may be reasonably called exposition and seek to explore the implications and ramifications of what I have been attempting to expound in ways that Āmidī himself did not. Furthermore, I am generally concerned more with systemization than was Āmidī—with exploring interconnections that he himself does not bring out. At certain points, I try to provide an analytic framework for understanding key ideas in his thinking. A good example of this is my treatment of the subject of transmission of texts.

Although Āmidī's writings may lack some of the features that we look for in systematic treatises (due to the dialectical format he adopts, as I explain in the Introduction), the organization of those writings is certainly systematic, and as one proceeds through them one soon senses that a system of thought is unfolding. It has been my primary object in writing this book to present that system of thought, along with the dialectical setting within which it comes to expression, as accurately and as lucidly as possible.

The diachronic dimension of this study is accordingly minimal. It has not been a primary concern of mine to situate Āmidī within Muslim intellectual history. I do offer in the Introduction a brief and very provisional sketch of the historical development of Islamic theoretical jurisprudence (*'ilm usūl al-fiqh*), and at other points—especially in the first part of chapter five—I make comments of a diachronic nature based on the work of Joseph Schacht. But I have not been fundamentally concerned with correlating my study of Āmidī's writings with work that has been done by others in the field of Islamic jurisprudence or (to the extent I deal with it) theology. Thus, when I write about the Mu'tazilis or the Zāhirīs, for example, I am writing about these schools as they appear in the writings of Āmidī, notwithstanding the important work that has been done on them by other scholars (e.g., Goldziher and Arnaldez on the Zāhirīs). The same is true of other schools or individuals that emerge in Āmidī's discussions.

This is not to say that a historical dimension is not present in the writings of Āmidī. To the contrary, those writings are filled with historically significant material. But in order to write genuine intellectual history one must correlate this material with other such material. I have not taken it upon myself to do this. Any history of thought that emerges in this study is thus primarily Āmidī's doing, not mine. It *has been* part of my purpose to allow Āmidī's own reading of the intellectual history to which he belonged show forth in this book.

Just as this study is not fundamentally diachronic, so it is not fundamentally critical. I have attempted to make clear the foundations—premises, presuppositions, methods—underlying the system of jurisprudential thought that unfolds in Āmidī's writings, but I have not undertaken to examine those foundations from a critical perspective concerned with issues confronting contemporary theory and methodology. Āmidī himself was very reflective about the methodological and epistemological underpinnings of his thought, and I have tried simply to present *his* thinking about those underpinnings, leaving it to my readers to respond critically in whatever way they choose. In elaborating here and there on the ramifications of certain ideas or principles found in Āmidī's writings, I am not, I think, adopting an essentially critical stance. I am simply exploring the consequences these ideas or principles have for the process of formulating the law.

Although I have endeavored to make my study of Āmidī's writings as comprehensive as possible, I have not attempted to cover everything contained in those writings. To have done so would have been to increase the size of this volume appreciably. My exposition of Āmidī's ideas and of the dialectic in which he was involved must therefore be understood to be selective. I have attempted to use my best judgment in deciding what to include and what not to include. In general, I have tried to include issues, ideas, positions, arguments, counterarguments that are most central to Āmidī's mode of presentation, leaving out only matters that appear somewhat peripheral. For example, in discussing arguments for a particular position that Āmidī holds on a given issue I frequently omit from my discussion those arguments Āmidī regards as weak, along with his criticisms of them, preferring to concentrate exclusively on the arguments he deems valid. Or, in discussing an issue that seems to have been on the periphery of Muslim jurisprudential dialectic I sometimes—if I do not omit mention of the issue altogether—give only a brief synopsis of the positions taken without any discussion of arguments. My selection is thus not a random selection intended merely to provide a sampling of what one may find in Āmidī's writings. It is rather an economizing measure aimed at keeping a fundamentally comprehensive and systematic

study within reasonable limits. The omission of material has not, I should hasten to add, been severe. I can say without hesitation that the greater part of what is contained within the pages of Āmidī's two major jurisprudential works—his magnum opus, *Kitāb al-ihkām fī usūl al-ahkām*, and its abridgement, *Muntahā 'l-sūl fī 'ilm al-usūl*—has been covered in this study.

The book will, I hope, prove to be accessible to a wide readership. I particularly hope that persons outside the field of Islamic studies will, despite its heaviness and (in places) denseness, find it a useful introduction to the broad field of Islamic jurisprudence. It is a book that will, I trust, lend itself to skimming and selective reading. Although a certain number of Arabic technical terms are retained, I have tried to keep these to the bare essentials and to maximize the use of English terms so as to make my prose as intelligible as possible for the general, educated reader. I particularly hope that persons interested in comparative law and in the relationship between law and religion will find the book useful.

Among advanced scholars in Islamic studies I hope the book will become a tool for further research in the literature of *usūl al-fiqh*. Its possible usefulness in this connection is, I think, twofold. It can provide the researcher with a broad overview of the subject matter covered in this literature. This will facilitate selection of topics on which to do research and provide a broad context for any topic selected. More important, the book can facilitate the actual reading of *usūl al-fiqh* texts. Since Āmidī's writings are basic to this field, they are an excellent starting place for persons anxious to gain mastery over this kind of text. I very much hope, therefore, that my Arabist readers will read this book side by side with the Arabic text. They will find that I have taken great liberties in developing a suitable English style of presentation of what is in the text, but they will also, I think, quickly detect the correlations between my discussions and the Arabic text and be able more readily to make sense of the text. I worked on these texts without the help of a book of this sort or of an Arabic-English lexicon of Arabic jurisprudential terms. I will be pleased if my struggle to make sense of these often difficult texts will facilitate the work of others.

I would anticipate that teachers of graduate and advanced undergraduate courses on Islam and Islamic law might also find this book useful as a source of selected readings to be included in their syllabi.

As I see it, one of the most significant features of this book consists of the simple fact that it is a book written in English. For comprehensive treatments of its subject matter one has always had, until now, to turn to Arabic works. There is no doubt that Arabic will remain a preeminent language of serious scholarship in the field of Islamic jurisprudence. But Arabic—despite

its universal use in worship and within the circles of traditional scholars (*‘ulamā’*)—is not the universal language of communication among Muslims that English is. More often than not, when Muslims from different regions within the far-flung world of Islam meet together, the language they use to communicate with each other is English; and Muslim communities within the English-speaking countries, including the United States, have been steadily growing. The discourses of early twenty-first-century Islam will therefore to a large extent be English discourses requiring English terminology. I shall be glad if this book is able to make a contribution toward the facilitation of such discourses.

My policy regarding Arabic terms has been to retain only those terms that are absolutely indispensable. I include in this category terms that carry important special meanings or connotations that would be lost if even the most carefully chosen English terms were used in their place. These are most often technical terms the usual English counterpart of which expresses the literal rather than the specialized meaning.

A couple of instances of terminological innovation are prominent throughout this book. Most Islamicists will, I think, find my use of the term “Sunnaic” to be well justified. As I wrote this book I felt a compelling need for an adjective to go with “Sunna,” especially as this category is much more central to Āmidī’s discourse than the category *hadīth*. Since “Sunni” already has a fixed meaning among speakers of English, it made perfect sense to me to employ the English suffix *-ic* and coin an adjective. My use of the similar adjective “Ijmā’ic” may seem more awkward and less convincing, especially as used in the phrase “Ijmā’ic consensus.” I hope that readers who may be skeptical about the propriety of this usage will bear with me and reserve judgment until after they have carefully read those parts of the book in which it most frequently appears. Once “Ijmā’ic” has been accepted, the much less frequent “Āthāric” will, I think, easily fall into place.

A word is in order on my use of the term “jurisprudent” throughout this book. I should make it clear that this term, as I use it, has no counterpart in the writings of Āmidī or in the literature of Islamic jurisprudence in general unless it be the term *‘ulamā’* (“the learned”), taken in the broadest sense. I include under this term all individuals and parties who appear in the pages of Āmidī’s works as participants in the dialectic that took place in medieval Islam under the rubric of *usūl al-fiqh*. Āmidī uses no term that includes them all, unless—as I suggest—it be the term *‘ulamā’* (which he, in any case, uses rather infrequently). Instead, Āmidī uses terms that designate groups of persons who participated in the dialectic. Prominent among these are the terms *fuqahā’* and *usūliyyūn*, either of which in certain contexts might be translated

as “jurisprudents,” thus giving the term a much more restricted application than I give to it. Other such terms are *mutakallimun* (“theologians”), *muṭʿazila* (“Muṭʿazilis”), *hanābila* (“Hanbalis”), *ashāb al-shāfiʿī* (“Shāfiʿīs”), *shīʿa* (“Shīʿīs”), and the elusive *ashābunā* (“our associates”), to name but a few examples. More often than not, the participants in the dialectic are individual scholars or parties within these larger groups.

My admittedly somewhat licentious use of the term “jurisprudent” was dictated by a genuine need that I felt while writing this book for a term that would include all the participants in what was, after all, a continuously unfolding dialectic. In some respects, the term “dialectician” would perhaps have served better, and this term in fact appears in certain sections of the book. A major problem with the word “jurisprudent” as I use it is that it may give the impression of a relatively compact and self-conscious community of scholars—the “jurisprudents”—that had been in existence for several centuries prior to Āmidī’s time. In fact, it can probably be said that the “jurisprudents” (in the broad sense in which I use the term, not necessarily in more restricted senses) come together as a “community” only in the pages of writings such as those of Āmidī. Āmidī’s writings are highly retrospective. They assemble within a dialectic format widely disparate groups from different periods in the history of Islam, some of whom had little direct contact with others. Such real historical encounters between individuals and parties as had taken place was in connection with particular issues or groups of issues. To suppose the continuous historical existence of a well-integrated jurisprudential community whose members debated a monolithic agenda of issues on the order of that presented by Āmidī in his writings would be clearly erroneous. Nonetheless, the integration that took place in the literature reflects a degree of integration in the *later* intellectual life of Islam. We can no doubt safely say that the overall trend was from earlier disparateness and separateness to later community with the literature itself and educational institutions such as the *madrasa* playing a major role in furthering this trend. The later integration, however, must not be exaggerated.

Any reader who, despite the length of this book, takes on the task of reading it straight through will probably receive an impression at times of excessive repetitiousness. I beg such a reader’s indulgence. I have allowed myself the liberty of repeating certain major points here and there on the supposition that some readers will read only certain sections of the book or read the entire book over a long period of time and that the various chapters, or in some cases groups of chapters, should as much as possible hang together as somewhat self-sufficient units.

This study is the product of approximately two decades of slow painstaking reading (as time permitted) of Āmidī's major work on the subject of *usūl al-fiqh*, the *Ihkām*, alongside the shorter *Muntahā* (both referred to above). A certain amount of supplementary reading was also done during that period in his major theological work, *Abkār al-afkār*, and the shorter *Ghāyat al-marām fī 'ilm al-kalām*. Since one does not always find the time or wherewithal one would like to have for this kind of work, I am especially grateful to those organizations that awarded me grants, thanks to which I was able during crucial blocks of time to make more than the usual progress. The American Research Center in Egypt supported two summers of work and the Social Science Research Council a full year (1975–76).

In addition, the Translations Program of the National Endowment for the Humanities supported my efforts to produce a translation of the *Muntahā* during 1983–84. The outcome of this project was a typescript of 465 pages representing an unfinished and, for me, not entirely satisfactory translation. But the effort was an important learning experience that contributed appreciably to my progress toward writing this book. In doing the translation I found myself moving further and further from strict translation and in the direction of what I came to call “expansive and adaptive translation,” in which I allowed Āmidī's terse language in the *Muntahā* to be supplemented by the fuller language of the *Ihkām*. I was in fact at this point paraphrasing to a large extent, and rather freely at that. When the period of the grant was finished, I decided to let my years of study of the Arabic texts (represented by a residue of copious notes) culminate in exposition rather than in “translation.” But the effort at translation deepened my familiarity with the texts, consolidating my earlier work and bringing me to the point of being able to synthesize what I had found in the texts and reflect more profoundly on its significance.

Thanks are due to several people who were kind enough to read parts or all of the manuscript of this book and make helpful and encouraging comments: Michael Carter (NYU), Frederick M. Denny (Colorado), Ulrich Haarmann (Freiburg), Michael Marmura (Toronto), and Roy Mottahedeh (Harvard). To Jeanette Wakin of Columbia goes my special thanks for not only reading the entire manuscript but also affording in recent years many hours of helpful conversation relating to my work on Āmidī, something that her own work on *usūl al-fiqh* has made her uniquely qualified to do. As this major work of my career appears finally in print, I am prompted to express gratitude for guidance received many years ago from two people to whom I owe, in very large measure, my lifelong interest in *usūl al-fiqh* and related matters: Farhat J. Zia-deh and the late Rudolph Mach.

I wish also to thank the staff of the University of Utah Press—especially Nana Anderson (director of the press), Norma Mikkelsen, Roger Reynolds, and Jeff Grathwoll—for their unfailingly courteous and efficient handling of a very unwieldy and onerous manuscript. I owe special thanks to Norma Mikkelsen for first proposing, while I was still in the early stages of writing the book, that I submit it to the University of Utah Press and for carefully watching over its destiny ever since. And I wish also to thank David Catron, director of the press during the time of submission and review of the manuscript, for his sincere personal interest in my work and frequent words of encouragement.

Two final matters:

Quotations from the Qurʾān that appear in this book are my adaptations of translations of A. J. Arberry (*The Koran Interpreted*) and M. M. Pickthall (*The Meaning of the Glorious Koran*). Adaptation has served two purposes: to bring the translation into line with particular contextual demands whenever necessary and to eliminate archaic English in favor of contemporary usage.

The transliteration of Arabic terms in this volume entails long vowel markers but not diacritical points to distinguish certain Arabic consonants from each other. The latter were omitted as a cost-saving measure. In reading entire transliterated sentences Arabists will, I presume, find the long vowel markers much more crucial to making sense of the Arabic than the diacritical points, since one proficient in Arabic should be readily able to identify words without the help of the latter. The *kasra* followed by a doubled *yāʾ* is represented as *īy* and the *damma* followed by a doubled *wāw* as *ūw*. The *tāʾ marbūta* is represented without *h* (e.g., *sunna* instead of *sunnah*), and the diphthongs are represented by *ay* and *aw*. Otherwise, the transliteration system employed here follows the usual conventions.

INTRODUCTION

Generally, when scholars in the field of Islamic studies speak of “Islamic law,” it is presumed that they are talking about what is called in Arabic *al-sharīʿa*, or *al-sharʿ*. Indeed, they frequently speak simply of “the Shariʿa,” or use the terms “Islamic law” and “the Shariʿa” interchangeably. However, it is something of an oversimplification to equate the Shariʿa with law. The Shariʿa may indeed be said to *contain* law, but one must also recognize that it embraces elements and aspects that are not, strictly speaking, law. This will become clear from a consideration of what is entailed in the concept of the Shariʿa.

While the Shariʿa may be defined in a variety of ways, no definition that seeks to do justice to medieval Muslim thought can do without the key concept of *ahkām*, rendered here as “categorizations.”¹ The Shariʿa is, first and foremost, the totality of divine “categorizations of human acts” (*al-ahkām fīʾl-afʿāl*, *al-ahkām al-ʿamaliyya*). The medieval Muslims were in fact much more concerned with the explication of the concept of a divine categorization of an act than with the explication of the concept of the Shariʿa as such. Indeed, in many of their most renowned writings one does not find any discussion at all of the latter concept, whereas discussions of the former typically take up many pages. Frequently, rather than speaking simply of the Shariʿa, Muslim scholars would speak of “Shariʿa categorizations” (*al-ahkām al-sharʿiyya*). The terms *al-sharīʿa* and *al-ahkām al-sharʿiyya* were interchangeable in their usage, and it is this interchangeability that prompts one to define the Shariʿa as a body of categorizations.

The categories entailed in these categorizations are of two basic types: *taklīfī* and *wadʿī*. I shall in these pages refer to these as “normative” (in the sense of behavior-regulative) and “nonnormative” categories. Though not literal renderings of the Arabic terms,² these designations do justice, I believe, to the essential import of those terms in the Muslim discussions. The normative categories are five: obligatory, recommended, neutral, disapproved, and forbidden (*wājib*, *mandūb*, *mubāh*, *makrūh*, *mahzūr*). The nonnormative

categories embrace two principal subsets: valid/invalid (*ṣaḥīḥ/bāṭil*); and unaffected by extenuating circumstances/affected by extenuating circumstances (corresponding to the terms *ʿazīma* and *rukḥsa*).

The categories “valid” and “invalid” have to do with the effects of acts, especially of bilateral transactions (contracts) and acts of worship. Thus a valid sale is one that brings about a transfer of ownership, an invalid sale is one that does not. A valid marriage is one that produces such effects as the right to a dower or to a share in the inheritance, an invalid marriage (for example, a marriage of siblings) is one that does not. Similarly, a valid performance of the *ṣalāḥ*-prayer is one that discharges the duty of prayer, an invalid performance (for example, an interrupted performance) is one that does not.

As for the categories “unaffected by extenuating circumstances” and “affected by extenuating circumstances,” these apply generally to acts that are already categorized as obligatory. With every obligatory act it is possible to ask whether its obligatory character is affected in any way by extenuating circumstances, either by being eliminated entirely or by being attenuated in some way. For example, the circumstance of being engaged in long-distance travel (which in premodern times involved much greater rigors than is the case today) entirely rescinded the obligation to observe the Ramadān fast and reduced the number of required bowing-kneeling-prostrating sequences in the *ṣalāḥ*-prayer. Thus an extenuating circumstance such as long-distance travel occasions a recategorization, as it were, of an originally obligatory act in a manner that reflects a posture of indulgence. If no such extenuating circumstance is present, then the original obligation remains fully in force, and the recategorization in this case is regarded as one of non-indulgence or, more literally, “firmness” (*ʿazīma*). All acts occur, of course, within a particular set of circumstances. Whether a circumstance is given an extenuating role is for God to determine. His giving such a role to the circumstance of long-distance travel is a mark of indulgence. Were he to give this circumstance no such role, his posture would then be one of firmness.

Among later medieval Muslim thinkers, the scope of the Shariʿa was sometimes extended to include divine categorizations of human religious beliefs (*al-ahkām fiʾl-ʾiṭiqādāt*, *al-ahkām al-ʾiṭiqādīya*) along with categorizations of acts. It became a preoccupation of popular theology, particularly as expressed in the creed (*ʿaqīda*), to summarize those beliefs that were obligatory and to castigate those beliefs that were forbidden. Orthodoxy was in fact by definition the sum total of what the faithful must believe in order to enter into eternal salvation. This conception is evident in the title of a later Muslim creed, *Kifāyat al-ʿawāmm fīmā yajib ʿalayhim min ʿilm al-kalām*,³ “Sufficient advice to the masses concerning what is incumbent upon them in the way of

theological knowledge.” However, notwithstanding this tendency to incorporate belief under the heading of the Shari‘a, it was the narrower understanding of the Shari‘a, which associated it with the realm of action, that generally prevailed. This usage will be followed here.

Of the five normative categories (obligatory, recommended, neutral, disapproved, and forbidden) two fit comfortably under the heading of law: obligatory and forbidden. We may in fact fittingly call the divine categorizations of acts as obligatory or forbidden *rules of law*, for rules, after all, are fundamentally statements about what we are or are not to do; they order behavior in a manner that leaves individuals with no choice but to comply. The categorizations of acts as recommended or disapproved, on the other hand, do not have this demanding character; such categorizations seek to influence behavior while giving the option of noncompliance. They are therefore decidedly unlike rules of law.

But the obligatory and the forbidden are not a concern of law alone; they are just as much a concern of morality. Therefore, if we are to characterize the categorization of an act as obligatory or forbidden as a rule *of law*, it would appear that we need some criterion with which to distinguish such a rule from the rule that belongs under the heading of morality. On the other hand, it is often pointed out that in Islam law and morality are indistinguishable from one another. Is it not a violation of the spirit of Islam to seek criteria that make law something different from morality? If our objective is to show that the divine categorizations are something wholly other than morality, then surely we are violating the spirit of Islam. For, if we are to speak at all of an Islamic morality (which clearly we must), then we cannot identify this morality with anything other than these very categorizations. By the same token, if we are to speak at all of an Islamic law (which clearly we must) then we likewise cannot identify this law with anything other than these same categorizations. Consequently, we are constrained to regard these categorizations as constituting both law and morality. Law and morality are thus of one substance; they consist of one and the same body of rules.

But I would contend that we may, without violating the spirit of Islam, speak of law and morality as two different aspects of the divine categorizations of acts as obligatory and forbidden. By this I mean that we may distinguish a respect in which these categorizations constitute rules of law from a respect in which they constitute rules of morality. The key concept entailed in this distinction is relevance to judicial proceeding. While various adjudicatory procedures have existed in Muslim society, some formal, others informal, the one that enjoys indisputable pride of place in traditional Muslim thinking is the highly formalized procedure known in Arabic as *al-qadā’*,

which we may call qadivial justice. I suggest that the categorizations under consideration constitute rules of law in respect to their relevance to this humanly exercised justice.

The distinguishing mark of qadivial justice was its uncompromising—in principle, at least, if not always in practice—adherence to the Sharī'a: it was the task of the qadivial judge, the qādī, to apply to cases brought before him nothing more and nothing less than the divine categorizations of which I have been speaking, those that categorize acts (including contractually stipulated acts) as obligatory or forbidden. Furthermore, the qādī had at his disposal—again, in principle if not always in fact—sanctions supplied by the state with which to back up his decisions. In short, there existed in Muslim society an apparatus for applying and enforcing the divine categorizations, and it is this that warrants our speaking of these categorizations as being tantamount to rules *of law*.

I suggest, on the other hand, that these same divine categorizations constitute rules of morality in respect of their relevance to that great event which is the ultimate touchstone of all that may be regarded as morality from an Islamic point of view, the Day of Final Reckoning, called in Arabic *yawm al-dīn*. The life of the Muslim is in reality lived under the shadow of not just one but two tribunals, one this-worldly and presided over by a human judge, the qādī, and the other other-worldly and presided over by the divine judge. It is the latter that matters most, since upon the verdict of the divine judge depends one's ultimate destiny in the hereafter. Each individual's deeds in this life are, as the Qur'ān makes clear, recorded in a book, and this infallible record provides on the awful Day the "facts" on the basis of which the verdict is rendered. Witnesses will be unnecessary, since the soul of each individual will immediately recognize the truth of the contents of the book. The soul will thus, in effect, witness against itself.

Unlike this-worldly justice, the divine justice will take into account the entire spectrum of an individual's activity while on the earth, not just a particular act or set of acts. For this reason, the Qur'ān speaks of a balance that will be used to weigh good deeds against evil deeds. Moreover, whereas this-worldly justice is concerned mainly with disputes between human beings, the justice of the Day of Final Reckoning will be concerned primarily with divine-human disputes. Offenders on that day will stand before God as neglecters of duties toward him and thus as violators of his rights as Lord.

The method I have just proposed for distinguishing the law aspect of the divine categorizations of acts as obligatory or forbidden from the morality aspect presupposes a particular understanding of "law" and "morality." "Law" in this book will mean positive law, nothing more and nothing less. I shall

accordingly avoid the use of “law” as a reference to a moral code, or body of moral norms, such as is common in Christian theology and preaching. One adhering to this Christian usage is free, of course, to speak of law as the basis of God’s judgments on the Day of Final Reckoning. I shall prefer to speak of morality as the basis of those judgments.

The restriction of “law” to positive law need not, of course, entail a positivist view of law of the sort discussed in works on the theory of law. “Positive law,” as this term is commonly used, refers simply to law conceived as a thing actually in force in a given society. “In force” is, admittedly, a vague expression; I shall take it to apply broadly to whatever is deemed by those charged with the task of making and enforcing judicial decisions to be relevant to, or determinative of, their deliberations. Insofar as the divine categorizations of acts as obligatory or forbidden are so deemed, it is possible to speak of them as constituting an Islamic positive law. In this book I shall restrict the term “law” to positive law as thus understood and speak of morality as something distinct from law (though not, as I have explained, in the sense of being something other than law in its substance). Speakers of English do not ordinarily understand the term “law of God” to be a reference to positive law. This is not to say, however, that it cannot be just that. English-speaking societies presuppose a separation of substance between positive law and morality; for that reason, if the latter is to be called the law of God the former may not be so called. Positive law is viewed as being essentially secular, however much it may be influenced by religiously based moral norms. From the point of view of a Muslim speaker of English, however, there is no reason why the law of God cannot be both a moral code and a positive law.

On the other hand, few English speakers understand “morality” in the manner in which it is here understood. In the English-speaking world ethical philosophies abound, some of which are worlds apart from others. I wish to emphasize strongly that “morality” in this book will have a distinctly Islamic sense. That the majority of thinkers who belong to mainstream Sunnī Islam regard relevance to the Day of Final Reckoning as a criterion of what constitutes morality cannot, I think, be denied. Positivist ethical philosophy is unknown in Islam; while a somewhat truncated version of natural law theory (which establishes an affinity between law and morality by making both discernible to human reason) won numerous adherents, especially among the Muʿtazilī school of theologians and later among the Shīʿa, it did not strike deep roots in Islam.

One may ask why, if indeed the morality that God applies on the Day of Final Reckoning is identical in substance with the law that the qāḍī applies, one cannot speak of the qāḍī as applying morality. There is, in fact, no reason

why one cannot. On the other hand, one must remember that, for most English speakers, to speak of the qādi as applying morality to cases brought before him is tantamount to saying that the qādi treats morality *as law* or that he transforms morality *into law*, since what a judge applies to cases is, in ordinary English usage, called law.

Speaking of the Shari'a—that is to say, the divine categorizations of acts as obligatory or forbidden—as constituting both law (in the sense of positive law) and morality is, it should be emphasized, possible only through the medium of English or some other European language. It is not, strictly speaking, possible to speak in this manner in the classical Arabic of traditional Islam, for that language does not possess true equivalents of the words “law” and “morality.” Only as speakers of English may Muslims make statements on the order of “X is both law and morality.” The Greek words *kanon* and *nomos* did, it is true, both find their way into Arabic (as *qānūn* and *nāmūs*), but the former came to be used mainly of administrative edicts issued by rulers, while the latter enjoyed currency largely in intra-Christian usage, which, under the influence of the Greek New Testament, restricted its application to divine law considered more as a moral code than as a body of positive law.

Classical Arabic does, on the other hand, have a word for ethics, *akhlāq*; but this term refers to ethics only in a specialized sense. The Muslim “science of ethics” is concerned, not with the evaluation of acts as such, but rather with the examination of those inner tendencies and traits of character (as distinct from the more legally relevant *niyya*, “intention”) that give rise to acts. This science presupposes that the evaluation of acts has already been achieved in another science, the science of the Shari'a. It seeks to know—given that certain acts are obligatory, others are forbidden, and so on—why people act either in conformity or in opposition to the Shari'a, and it attempts to find the answer in an analysis of character. Thus *akhlāq* does not mean “morality” in the broader sense inclusive of the evaluation of acts.

To speak of the Shari'a as both law and morality is thus to speak a language foreign to traditional Islam. Muslim thought knows only one concept, that of the Shari'a: it is we in the West who must always think in terms of the two concepts of law and morality and either separate them or fuse them together. Law and morality mean different things to different people, and those who separate them will understand them differently from those who fuse them together. When we attempt to think the thoughts of traditional Islam through the medium of English or some other Western language, we are compelled to deal with this law-versus-morality issue. We are compelled, that is, to ask whether the Shari'a is law or morality or both—and even if we agree that it is both we shall necessarily have given consideration to the other alternatives.

We could, of course, try to avoid this Western preoccupation altogether by speaking exclusively of the *Shariʿa* without employing the terms “law” and “morality,” but then we would run the risk that the term “the *Shariʿa*” would conjure up wrong understandings in the minds of people conditioned to think in terms of law or morality. It would also amount to an avoidance of the difficult but very often necessary task of making concepts derived from one culture meaningful within another culture.

Since this book is written in English for speakers of English, I shall persist in speaking of the divine categorizations of acts as obligatory or forbidden as constituting both rules of law and rules of morality. I shall accordingly regard law and morality as being, from an Islamic point of view, identical in substance in the sense of their consisting of one and the same body of rules; I shall at the same time use the terms “law” and “morality” to designate different aspects of these rules, their relevance, on the one hand, to this-worldly adjudication and their relevance, on the other, to the final reckoning that will take place in the world beyond.

The major emphasis of this book will be upon the law side of this equation. This is an emphasis that I have quite consciously chosen. I wish to focus the attention of the reader upon that aspect or component of the *Shariʿa* that has a bearing upon the process whereby an Islamic state, through its appointed judges and enforcement agencies, regulates the conduct of its members toward each other and thus achieves social order and peace. This should not be taken to imply a disinterest in morality on my part. I cannot emphasize too much to my reader the importance of keeping the morality side of the equation in mind throughout the reading of this book. My reason for emphasizing the law side here is partly that I wish to be of service to that particular group of readers who are interested specifically in positive law, whether they be legal scholars, historians, social scientists, or whatever. I especially hope to make what I have to say about Islamic law meaningful to legal communities in the Western world, especially those clustered around law schools. This requires a clear focusing upon positive law, since lawyers and legal scholars are not professionally committed to the study of morality as a subject of interest in its own right (however much they may find that morality has a bearing upon the study of law).

The study of Islamic law in the West has traditionally been the province of nonlawyers, whose interests were not defined in terms of positive law. While European colonial judges and legal administrators had a hand in the preparation of materials for the study of Islamic law, especially translations of important Arabic legal writings, the most important pioneering scholarship was done by persons who had no formal legal training or experience in the

legal professions. In the last three or four decades, lawyers and persons with legal training have come to have a larger role in the production of substantive scholarship—one thinks immediately of Noel Coulson, J. N. D. Anderson, and Farhat J. Ziadeh as earlier examples—and the trend seems likely to continue. The likely increase of interest in Islamic law in coming years is bound to give this subject a firm place within comparative and international law studies at major law schools.

But there is another reason for my emphasis upon positive law, one that relates specifically to the field of Islamic studies. I hope to promote among scholars in this field clearer thinking about what is meant when one speaks of Islamic law. After all, scholars in this field speak far more commonly of Islamic law than they do of Islamic morality. But this is no doubt because they have taken the Islamic fusion of law and morality so much to heart that they have been satisfied to let the term “Islamic law” suffice as a designation for both aspects or dimensions of the Shari‘a. It is my belief that it is a service to the field to promote a clear-cut conception of Islamic positive law. To do so is not, I think, to do violence to the spirit of Islam. While classical Arabic may not have a word that quite serves as a designation for positive law, Muslim thinkers have not been devoid of those interests that underlie the concept of positive law. Classical Arabic does, after all, have a word for the judicial process, *al-qadā’*, and the concept of relevance to judicial deliberation and enforcement is certainly one that no Muslim thinker would have had a problem with. I see no reason, therefore, why this concept cannot be used as a criterion for identifying what may be regarded as a positive law dimension of the Shari‘a as distinct from a morality dimension.

The Muslim view of history precludes the possibility, since the advent of Islam, of a world without a Muslim polity (*dār al-islām*), and it equally precludes the possibility of a Muslim polity without a functioning judiciary, however imperfect this functioning may in fact be in actual instances. Wherever the Muslim polity is to be found, therefore, an Islamic positive law will be found in some degree. Of course, the Muslim view of history also acknowledges that much of the world is not contained within the Muslim polity and that Muslims have often found themselves living within that part of the world. In such a situation, Islamic morality may be said to exist without Islamic positive law. Muslims in such a setting continue to live in the shadow of the Day of Final Reckoning; they do not, however, live in the shadow of qadivial justice. Bona fide qadivial justice, let us remember, exists only within the context of an Islamic state.

A greater appreciation for the positive law side of the Shari‘a will, I think, improve our understanding of certain developments in contemporary Islam.

To a large extent, the phenomenon commonly referred to as the Islamic resurgence or revival may be seen as a movement to establish or (as some might say) restore Islamic positive law, to make Islamic norms relevant once again to the judicial process within a truly Islamic polity (whether through legislated reform or through a revolutionary remaking of the political order). One hears a great deal about the Shari'ah as a source of contemporary Muslim ideology, as the basis for the reconstruction of *thought* in the realm of economics, politics, sociology, education, and so on, even in the realm of natural science. But such theorizing, no matter how widespread, will for a great many Muslims add up to very little if it is not translated into positive law, including education law as not the least of its components.

All my remarks concerning the two-sided character of the Shari'ah—its character as both law and morality—have thus far been made with reference to the categorizations of human acts as obligatory and forbidden. What of the other categorizations that make up the Shari'ah? It seems to me that certain of these—the categorizations of acts as recommended and disapproved—clearly do not have this two-sided character. Or, to state the point a little more precisely, they have the character of morality but not of law. By this I mean that these categorizations have relevance to the Day of Final Reckoning, but none to the this-worldly judicial process. No dispute capable of being brought before a judge can arise in connection with a failure to perform a recommended act or with the performance of a disapproved act. A judge is not, in his role as arbiter of conflicting claims, concerned with recommending or disapproving, although the Islamic judge—the *qādi*—may, in a strictly nonjudicial advisory capacity, inform people as to what the Shari'ah recommends or disapproves.

Since both categorizations of acts as obligatory or forbidden and categorizations of acts as recommended or disapproved are relevant to the Day of Final Reckoning, both may be subsumed under the category of morality. However, there is a difference between them. The relevance of the former to the Day of Final Reckoning is not quite the same as the relevance of the latter to that same event. The categorizations of acts as obligatory and forbidden are the basis upon which other-worldly punishments as well as other-worldly rewards are meted out, whereas the categorizations of acts as recommended and disapproved are the basis upon which other-worldly rewards alone are meted out. Following a distinction drawn by Lon Fuller with reference to Western law (but without applying it in quite the same way),⁴ we may regard the former type of categorization as constituting a morality of duty and the latter as constituting a morality of aspiration. It is the morality of duty that is capable of assuming the character of law by being applied by a judge to

particular disputes; the morality of aspiration does not have this capability and therefore has no relationship (contrary to Fuller's treatment of it) to law.

If we are going to apply the term "rules," whether they be rules of morality or rules of law, to the divine categorizations of acts as obligatory or forbidden, then I suggest that we apply the term "exhortations" to the divine categorizations of acts as recommended or disapproved. The rules lay down our duties; the exhortations provide the framework for our aspirations. (In the case of a forbidden act, the duty, of course, is a duty not to perform the act, and in the case of disapproved acts the exhortation is an exhortation not to perform the act.)

I have yet to comment on the last of the five normative categorizations, the categorization of human acts as neutral (*mubāh*). From a strictly legal point of view, or from the point of view of the morality of duty as opposed to the morality of aspiration, all acts that are neither obligatory nor forbidden fall under the heading of the neutral. However, this broader understanding of neutrality does not find expression in the standard terminology of traditional Islam. The qādī may be assumed to have had in his thinking the category of human acts that were of no concern to him in his capacity as adjudicator. But the category is absent from theoretical literature. This is clearly indicative of the degree to which the Muslim mind refuses to detach, even in the most theoretical discussions, the positive law/morality of duty component of the law from the morality of aspiration component; or, to state the point slightly differently, it is indicative of the degree to which the Muslim mind refuses to detach rules from exhortations, as though the former could be treated as an object of interest in their own right apart from the latter. The Sharī'a, being a thing of divine provenance, is an indivisible unity, expressive of the unity of God himself. Therefore, only one type of neutrality presents itself for serious consideration on the part of the Muslim: the type that embraces only acts that lie beyond the pale of both rules and exhortations.

As for the nonnormative categories into which human acts may be placed, these, I think, share the law/morality dualism that characterizes the categories "obligatory" and "forbidden." That this is so is quite obvious in the case of the categories "valid" and "invalid," notwithstanding the tendency among some Islamicists to view these categories as "purely legal" in contradistinction to "religious qualifications" (Schacht's term for the five normative categories).⁵ The relevance of these categories to the this-worldly judicial process is undeniable. If a contract of marriage, for example, can be shown in a court to be valid and the wife can demonstrate that her husband has been negligent in providing support, the judge will provide a remedy within the terms of the contract. But the husband is not only answerable to a court of law for

his neglect of a contractually based obligation; he is also answerable to God on the Day of Final Reckoning. There is in fact a clear Qur'ānic injunction to fulfill the terms of contracts. It therefore matters to the Divine Judge whether a contract is or is not valid. When the categories "valid" and "invalid" are applied to acts of worship, they appear to have a relevance to the Day of Final Reckoning alone. In this respect, these categories can lose their legal dimension completely. We may therefore suggest that they have a law/morality duality only in their application to bilateral transactions.

The categories "unaffected by extenuating circumstances" and "affected by extenuating circumstances" have a potential relevance to the this-worldly judicial process. However, since they are most commonly applied to acts of worship, they appear in actual fact to have very little such relevance; we may regard them as belonging, in actual practice, to the realm of morality. Whether one has or has not performed a valid *salāh*-prayer, for example, cannot much matter to a court of law. It will, however, matter a great deal to the Divine Judge on the Day of Final Reckoning.

There is a strong interconnectedness between the categories "obligatory" and "forbidden," on the one hand, and the nonnormative categories, on the other, that must not be missed. We have noted already that the categories "unaffected by extenuating circumstances" and "affected by extenuating circumstances" are generally applicable to acts that have a prior categorization as "obligatory." Indulgence (*rukhsa*) and firmness (*'azīma*) are thus two different postures vis-à-vis obligation. In the case of "valid" and "invalid," the interconnectedness with "obligatory" and "forbidden" is more complicated and at the same time far more fraught with consequence. Many obligations hinge upon the validity of bilateral transactions. A valid contract of marriage, for example, gives rise to the obligation to provide support, to nurture and care for offspring, to pay dower in the event of divorce, to meet the spouse's sexual needs, and so on. When one speaks of a valid contract as having effects, one normally means that it produces obligations along with corresponding rights. We may distinguish, therefore, between obligation that is contingent upon a bilateral transaction and obligation that is not. More important than this distinction, however, is the distinction between what may be called higher-order obligation and lower-order obligation. Higher-order obligation is obligation that exists by virtue of divine categorization, obligation that is imposed by God. Lower-order obligation is obligation that human beings take upon themselves freely when entering into transactions or when taking oaths. The latter type of obligation is intimately tied to the former and, from an Islamic point of view, has relevance only by virtue of this tie.

To juxtapose the two orders of obligation in a single statement, we may say that God imposes upon us an obligation to fulfill the obligations we take upon ourselves in entering into transactions. It is thus the divine imposition that undergirds the obligatoriness of commitments that we freely assume.⁶ A transactional act—entering into a contract—in and of itself is usually categorized as neutral; hence the freedom that we are able to exercise in electing to enter or not to enter into a contract. Once a contract has been entered into, however, our freedom has been relinquished, and we are bound by obligations resulting from the contract and undergirded by a divine imposition.

What is true of the bilateral transaction is implicitly true of other human acts that give rise to obligations, such as injuries to other persons that create the obligation to compensate for damages. Again, a humanly occasioned obligation is undergirded by a divine imposition.

The medieval Muslim discussions of the divine categorizations of human acts do not frequently take up the subject of rights (*huqūq*), although rights are very much a part of Muslim thinking and should be always kept in mind by one seeking to do full justice to the Islamic tradition. Rights are, of course, correlative with obligations. In marriage, for example, the obligation on the part of the husband to provide support entails a corresponding right on the part of the wife to receive support. This correlation obtains, not only on the level of relations between human beings, but also on the level of relations between a human being and God. The fundamental obligations are those that human beings have toward God: all other obligations are undergirded by these and derive their bindingness from them. Similarly, the fundamental rights are those that God, as Creator-Lord, has relative to his created subjects. Again, any rights that human beings may have relative to each other are entirely derivative. God's rights and the corresponding obligations that human beings have toward him stem from a primordial covenant between God and human beings, a subject that is expounded mainly in the commentaries on the Qur'ān.⁷

The Shari'ah is, I have said, the totality of divine categorizations of human acts. But these categorizations have not, according to the common Muslim view, been precisely spelled out for the benefit of mankind. True, God has revealed his eternal speech—an attribute inhering in his very essence—to mankind through prophets. But when one searches through the repositories of divine revelation, one does not find an abundance of statements of the form "X is obligatory" (or recommended, disapproved, forbidden, etc.). Instead, one finds a variety of less precise linguistic forms on the basis of which human scholars must ascertain to the best of their ability the divine categorizations and then give precise expression to them. Statements of the

form “X is obligatory” are thus, for the most part, the result of human scholarly effort; they are not themselves a given. What *is* given is a plethora of highly interpretable “indicators” (*adilla*) of the divine categorizations. God in his wisdom has chosen to engage human beings in the toilsome task of ferreting out the categorizations from these indicators, of articulating what he himself has not precisely articulated. In this way he has afforded them greater opportunity for proving their devotion to him and for attaining favor with him.

The Islamic tradition carefully distinguishes the articulation of the divine categorizations by human scholars from the categorizations themselves. The former it calls *fiqh*, the latter—as we have already noted—*sharīʿa*. *Fiqh*, which means “understanding,” clearly has the human scholar as its subject, while the subject of *sharīʿa*—the Sharīʿa-giver, or Sharīʿa-maker (al-shāriʿ)—is ultimately God.⁸ The Sharīʿa is thus the *object* of the understanding that human scholars seek and as such is distinct from the understanding itself. It is under the heading of *fiqh* rather than of *sharīʿa* that the actual articulations of the divine categorizations by human scholars are to be placed, since these articulations represent or express the scholars’ understanding of the Sharīʿa. The hesitation of the Islamic tradition to identify these articulations with the Sharīʿa as such arises from an acknowledgment that they are fallible and can therefore sometimes be erroneous. The fact that the articulations of different scholars or schools can contradict each other bears testimony to this fallibility. The tradition firmly maintains the principle of the essential unity of the Sharīʿa: God does not contradict himself. Therefore, where different articulations of the divine categorizations contradict each other, they cannot all be correct. On the other hand, in the absence of any standard whereby the correct articulations can be separated from the incorrect ones, all articulations, however contradictory, constitute genuine *fiqh* so long as they have been arrived at with the requisite degree of conscientiousness and scholarly integrity.

Contradictory articulations of the Sharīʿa do not represent options from which the individual may make random selections. Each scholar is, as we shall see, bound to adhere to those articulations to which his own scholarship leads him: these constitute his “understanding” of the Sharīʿa, and for him they are therefore authoritative. Those who lack the scholarly qualifications required for the task of articulating the divine categorizations must place themselves under the tutelage of one who does possess these qualifications. In Arabic the latter is called a *mujtahid*, “toiler,” and the scholarly work he undertakes is called *ijtihād*, “toil.” Since the majority of Muslims are not mujtahids, they necessarily group themselves into clusters of disciples, or schools, surrounding the most prominent mujtahids. Mujtahids thus stand

out from the rank and file of Muslims, even from some who may make claims of a sort to being scholars; mujtahids are scholars in a very specialized sense. In a later chapter we shall have a closer look at the qualifications that distinguish them from others.⁹

The subject of *fiqh*, I have said, is the human scholar. There is, however, a difference between the scholar who produces *fiqh* and the scholar who merely bears it. It is the former who is the true mujtahid, the subject of *fiqh* in the more profound sense, the real "understander." One who bears and transmits *fiqh* is called *faqīh*. Since one who produces *fiqh* will also bear it and transmit it, every mujtahid is also a *faqīh*. But not every *faqīh* is a mujtahid. It is significant that the Arabic term *mujtahid* is a nomen agentis (*ism al-fā'il*), whereas *faqīh* is not.

The task of articulating the divine categorizations of human acts is to be undertaken in accordance with a body of carefully worked out methodological principles. These principles are elaborated in a special Islamic science known as *'ilm usūl al-fiqh*, the "science of the principles underlying [or foundations of] *fiqh*." Its practitioners are called, in Arabic, *usūliyyūn*, "ūsūlists." Alongside this science stands *'ilm al-fiqh*, the "science of *fiqh*," whose business it is to undertake the actual articulation of the divine categorizations, to produce *fiqh*. These two sciences together constitute complementary parts of a single scholarly enterprise, one that endeavors to discover and expound the Shari'a.

Frequently, *fiqh* is translated as "jurisprudence" and *usūl al-fiqh* as "the principles of jurisprudence." These translations are no doubt prompted to some extent by the semantic affinity between *fiqh* and the Latin *prudentia*. However, it seems to me that they require a certain amount of qualification. To begin with, *fiqh* includes within its domain the scholarly articulations of those divine categorizations that, as we have noted, are devoid of legal relevance, which, I have suggested, belong under the heading of moral exhortations rather than of rules. Furthermore, *fiqh* is, insofar as it embraces rules, characterized by the same duality we noted in connection with the Shari'a itself: it has a (positive) law side and a morality side. That is to say, the human articulations of divine rules that make up *fiqh* are at once articulations of law and articulations of morality: the rules are at once legal rules and moral rules. If *fiqh* is jurisprudence, it is so only with respect to the law side of this equation. On the other hand, it seems to me that a science that explores the methodological principles underlying the articulation of law deserves as much to be called jurisprudence as the science that sets forth the actual articulations of the law, if not more so. Both the "science of *fiqh*" and the "science of the principles underlying *fiqh*" viewed from the standpoint of their law side,

therefore belong under the heading of jurisprudence. They could perhaps be termed practical jurisprudence—the jurisprudence that is concerned with the actual articulation of the law, putting the methodological principles into practice—and theoretical jurisprudence. Viewed from the standpoint of their morality side, on the other hand, these sciences are best placed under the heading of ethics.

It should be noted that Islamic jurisprudence, thus conceived as present in (rather than identical with) the two *fiqh*-related sciences, lacks one important feature of Western jurisprudence: it does not deal in a systematic way with general legal concepts such as the legal person, legal capacity, rights, obligations, property, contract, agency, and so on. Although these concepts certainly exist in Muslim legal thinking and are in fact highly developed, they are not discussed as topics in their own right but emerge only in connection with the discussion of actual rules. What one finds in the literature of the two twin sciences that make up Islamic jurisprudence are, on the one hand, elaborate statements of rules (often with lengthy methodology-oriented supportive arguments appended) and, on the other hand, extensive discussions of the methodological principles governing the articulation of those rules.

Since it is the articulations of scholars that are actually applied in courts and enforced by the state, there is a sense in which *fiqh* is law in its own right. We thus have two levels of law: Shari'a law and *fiqh* law. Shari'a law is law considered as residing in the being of God and as embedded within revelation without acquiring a fully articulated form therein. *Fiqh* law is law considered as something articulated by scholars, something residing in their formulations. Shari'a law is a sort of Platonic ideal that scholars try to realize, however imperfectly and fallibly, in their *fiqh*. *Fiqh* law accordingly derives its validity from its character as the closest approximation of Shari'a law that scholars are capable of achieving.

Another way to express the contrast between Shari'a law and *fiqh* law is to describe the former as "God's law" and the latter as "the jurists' law." The use of the phrase "jurists' law" was popularized by Joseph Schacht, who borrowed it from the field of Roman law studies.¹⁰ It is an apt rendering for *fiqh*. Muslim thought regards jurists as the necessary mediators of the divine law: it is in their formulations, and in them alone, that we find law that may be applied in courts. We thus, according to the Muslim view, do not receive the law considered as a body of fully articulated and implementable rules directly from God; we receive it rather from great jurists. But the law expounded by the jurists—the jurists' law—has validity only by virtue of its claim to being the closest approximation of the ideal law of God that

the jurists are capable of producing. In order to make this claim, the jurists must be able to declare with a clear conscience that they have expended the utmost effort on this task.

The present study will be primarily concerned with the part of Islamic jurisprudence that I above suggested might be called theoretical jurisprudence: that is to say, it will be primarily concerned with the "science of the principles underlying *fiqh*" considered from the standpoint of its law side. This being the case, it is appropriate to restate several points made earlier" in such a way as to give them a specifically jurisprudential relevance. The Islamic tradition affirms that the divine law is not given to human beings in the form of a ready-made body of precisely articulated rules. When one searches the repositories of divine revelation, one finds, not statements of rules, but legally imprecise and highly interpretable words and phrases that must serve as indicators of the divine rules. It is the business of mujtahids to construct rules on the basis of these indicators: in so doing, they articulate the otherwise unarticulated law. Law, in the sense of a body of precisely articulated rules, is thus not a given. What is given is a plethora of indicators. God in his wisdom has chosen to engage human beings—the mujtahids—in the toilsome task of ferreting out the law from their indicators, of articulating what he himself has not precisely articulated.

My approach to the study of Islamic theoretical jurisprudence will be systematic and topical, rather than historical. My focus will, furthermore, be upon the writings of a single author, the eminent thirteenth-century jurisprudent-theologian Sayf al-Dīn al-Āmidī (d. 631/1233). While the exploration of the thinking of a variety of medieval Muslim authors on a given topic or range of topics dealt with in Islamic theoretical jurisprudence can without question be very rewarding for the contemporary academic community, I have chosen the path of concentration on a single author in the belief that such an approach affords a deeper understanding of Islamic theoretical jurisprudence as a total system. By devoting one's research time to a single author rather than dividing it among a plurality of authors, one is able to explore the entire range of topics dealt with in this important Muslim discipline and to discover how the chosen author's ideas on these topics fit together to form an integrated whole. Once such a study has been completed, one may move into the writings of other authors with a better understanding of the lay of the land in which all medieval writers who contributed to Islamic theoretical jurisprudence labored. Ultimately, out of the labors of a variety of scholars working on different Muslim authors, one would hope to see the emergence of diachronic insights and perspectives leading to a history of Islamic jurisprudence. This desideratum applies, of course, to other Islamic sciences,

including the one that has thus far received the most attention from Western scholars: theology (*‘ilm al-kalām*).

While I am loath to give even the most cursory account of the history of Islamic theoretical jurisprudence, I shall, in the interests of placing Āmidī's work in some sort of context, offer a few tentative comments on the subject. Scholars both in the West and in the Muslim world commonly regard the illustrious Muhammad ibn Idrīs al-Shāfi‘ī as the giant figure in the development of Islamic legal methodology. Muslims who so regard Shāfi‘ī tend to place emphasis on his role as the author of the first important jurisprudential treatises, especially *al-Risāla*. In writing this treatise, Shāfi‘ī “recorded” (*yudawwin*) the science of theoretical jurisprudence;¹² that is, he transformed it from an orally transmitted science into a science with a literary basis. In traditional Muslim thinking, no Islamic science could be, in respect to its substance, the product of a generation later than the earliest one; all true science (*‘ilm*) flowed downstream from the original community of Muslims who had lived during the era of revelation. What remained for subsequent generations to accomplish was, first and foremost, to commit the sciences to the written page and, secondarily and as an extension of the first task, to articulate or make explicit what was only implicit in the determinations of the pious ancestors.

Western scholarship—meaning principally that of Joseph Schacht—has, while recognizing Shāfi‘ī's importance in the literary history of Islamic theoretical jurisprudence, given him a much larger role in the shaping of that science. Although Shāfi‘ī certainly was not the one to initiate discussion of principles governing the human articulation of the divine law, Schacht has portrayed him as crystallizing the basic agenda for that discussion during the period when Islamic theoretical jurisprudence was fast developing toward its classical form. Perhaps even more importantly, Shāfi‘ī, according to Schacht, vastly expanded the textual corpus in which indicators of the law were to be found by including in that corpus, along with the Qur’ān, the vast body of narrative traditions containing accounts of the sayings and deeds of the Prophet Muhammad, which together constituted the Sunna (prophetic custom). Earlier scholars—those belonging to what Schacht called “the ancient schools”—had relied on their own consensus (believed to be the expression of a “living tradition,” according to Schacht) as the primary authority after the Qur’ān.

In Shāfi‘ī's scheme, as described by Schacht, the consensus of scholars was superseded by narrative traditions, which were in his time fast attaining a fixed form while being committed to writing, a process that was to reach completion within about a century after his death. With an enlarged and increasingly defined textual basis, the work of formulating the law was to

become predominantly an exercise in text-criticism and exegesis, and all the tools that were necessary to any such endeavor—especially those provided by the Arabic philological sciences—were to become relevant to the jurisprudential enterprise. This, more than any other single factor, was to contribute to the ultimate shaping of Islamic theoretical jurisprudence and to the setting of its agenda.

So long as Schacht's findings remain fundamentally valid for us we shall be inclined to see Shāfi'ī as the greatest pioneering figure in the development of theoretical Islamic jurisprudence. On the other hand, much work remains to be done on the origins of this science before we can make any general statements with complete confidence. Since members of the Hanafi school are prominent among the writers in this science in the century or so following Shāfi'ī's death, we need to inquire how far their agenda derives from discussions within the circle of disciples of Abū Hanīfa, discussions that would have preceded Shāfi'ī's writing of *al-Risāla*. Later historians of the science were to see the science as having developed along two main paths, one blazed by *fiqh* specialists (*fuqahā*), the other by "speculative theologians" (*mutakallimūn*).¹³ The *fiqh* specialists, we are told, were primarily concerned to provide a theoretical justification for a tradition of law that had been built up by their forebears in *fiqh*, especially by great masters such as Abū Hanīfa, while the theologians took a freer, more noncommittal approach, seeking to discover principles for the formulation of legal rules without regard to previous accomplishments. It is, of course, erroneous to see *fiqh* specialist and theologian as representing mutually exclusive categories—as many Muslim scholars were both. The difference between the two trends, therefore, had to do with emphasis or primary orientation. Since the tradition-oriented trend was especially characteristic of Hanafis, it is often designated as the Hanafi trend. The speculative trend developed by the theologians was prominent among adherents of the Shāfi'ī school but is only occasionally designated by the name of that school. The contrast between the two trends is thus normally presented simply as a contrast between Hanafi specialists in *fiqh* and speculative theologians.

My point in calling attention to these two trends is that, given that Hanafi specialists in *fiqh* developed the science of theoretical jurisprudence in a manner distinctive of their school, it seems reasonable to suppose that this distinctive form of the science would have originated in large part, if not entirely, in discussions that took place in Hanafi circles, independent of Shāfi'ī's influence and prior to his rise to prominence and that it would not have derived its primary inspiration from the man to whom the adherents of the speculative trend commonly professed allegiance. Furthermore, certain Muslim

biobibliographical works trace the beginnings of Hanafī jurisprudential writing back to the two famous disciples of Abū Hanīfa, Abū Yūsuf (d. 182/798) and Shaybānī (d. 189/805), both predecessors of Shāfiʿī (d. 204/820). This is not to deny that interaction with Shāfiʿī or with his disciples could have had an important role in the shaping of Hanafī thinking.

Muslim biographical and biobibliographical works bear witness to a steady output, during the century or so after Shāfiʿī, of writings on topics falling within the domain of theoretical jurisprudence.¹⁴ However, few of these have survived. Relative to the surviving works, it is the Hanafī school that has fared the best. We have available to us a line of Hanafī theoretical-jurisprudential writings running from Shāshī (d. 325/936-37) through Karkhī (d. 340/952), Jassās (d. 370/981) and Dabūsī (d. 430/1039) and culminating in the famous treatise of Pazdawī, entitled simply *Usūl al-Pazdawī*, a work that was to remain a classic among following generations of Hanafīs. These works make it possible for us to undertake research on the development of Hanafī theoretical jurisprudence during a period beginning about a century and a half after the death of Abū Hanīfa (d. 150/767) and ending with Pazdawī, a period that covers nearly a century and a half.

It is to this period of researchable development within the Hanafī school that the earliest extant literature representing the speculative-theological trend within Islamic theoretical jurisprudence also belongs. Although it has been shown that the Muʿtazilī theologians were not the pioneers of the *kalām* movement and that they at no time monopolized it, they unquestionably played a leading role in the development of *kalām* during their heyday. Similarly, they appear to have played a leading role in the development of the speculative-theological approach to theoretical jurisprudence. To this may be added the important role played in the development of the Arabic philological sciences, which were to become closely allied to the sciences of jurisprudence.

The available literature of the Muʿtazilī school of theoretical jurisprudence consists of writings of two great figures in the later history of that school, the incomparable ʿAbd al-Jabbār (d. 415-16/1024-25) and his disciple Abu'l-Husayn al-Basrī (d. 436/1044-45). Unfortunately, the extant works of the former do not include his *opus magnum*, *Kitāb al-ʿumad* (or *Kitāb al-ʿahd*). However, since Abu'l-Husayn's principal work, the *Kitāb al-muʿtamid*, was based upon it, we can claim at least indirect access to it. The extant works of ʿAbd al-Jabbār, his *Mughnī* and *Sharh al-usūl al-khamsa* also give us access to his thinking on many jurisprudential topics. Following the *Kitāb al-muʿtamid*, the next great extant work representing the speculative-theological approach is Imām al-Haramayn al-Juwaynī's *Burhān*. With Juwaynī (d. 478/1085), who was a contemporary of Pazdawī, the speculative-theological tradition finds

expression in its first great classical work, as had the Hanafī tradition in Pazdawī's work, and the 150-year period in question comes to an end. Unlike ʿAbd al-Jabbār and Abū'l-Husayn, Juwaynī was an adherent of the Ashʿarī school of theology, as were the major authors in the speculative-theological tradition after him, including Āmidī. Likewise, Juwaynī and those after him, again including Āmidī, were for the most part adherents of the Shāfiʿī school of law. The special relationship that existed between Ashʿarī theology and the Shāfiʿī school has been the subject of studies by George Makdisi.¹⁵

A thorough investigation of the differences between the tradition-oriented, or Hanafī, trend within Islamic theoretical jurisprudence and the speculative-theological trend will not be possible until studies of individual works within each of the two traditions have been completed. No definitive statement can therefore now be made as to their nature or profundity. We can only observe differences that become apparent to one who scans the literature superficially. These relate to two things: terminology and the structure of treatises. Terminological differences, of course, may or may not relate to matters of substance, and one can surely find cases where the same idea or principle is expressed differently in the two traditions. But differences in terminology are, by the same token, bound in at least some cases to strike much deeper. Furthermore, they suggest some degree of isolation (if not total isolation) of each group from the other, for when groups evolve different vocabularies in wrestling with certain problems they cannot have been speaking to each other a great deal. Such isolation itself suggests that differences of a more substantive nature would emerge. Differences in the structure of treatises have to do with the way in which content is organized, the order in which ideas are presented. These seem to have been accentuated with the growing tendency on the part of the adherents of the speculative-theological approach, from Juwaynī onward, to mold Islamic jurisprudence into a highly formalized science on the Aristotelian model, as was done with the science of *kalām*. I shall return to this matter shortly.

The reader may wonder why no comment is made here concerning the differences relating to the well-known principle of *istihsān* (often translated as "juristic preference"), long regarded as a hallmark of the Hanafī tradition; for surely, one might think, such differences relate to matters of great substance. I shall reserve comment on the principle of *istihsān* until later in this book.¹⁶ Here I wish to note, however, that even in regard to this highly celebrated principle we are still, in my view, not in a position to probe the depths of the real substantive differences that separate Hanafīs from other Muslim thinkers. One must at present entertain the possibility that even here the differences are more terminological than substantive.

Within the development of the speculative-theological approach to theoretical jurisprudence that followed the death of Juwaynī, Āmidī stands as a towering figure, notwithstanding the undeniable importance of Juwaynī's immediate disciple, Abū Hāmid al-Ghazālī. This commanding position is due in part to the sheer comprehensiveness of Āmidī's *opus magnum*, his *Kitāb al-ihkām fī usūl al-ahkām* (hereafter referred to simply as the *Ihkām*). In the *Ihkām* Āmidī covers the entire range of theoretical-jurisprudential issues (*masā'il*), leaving no issue known to him untouched. Furthermore, in discussing each issue he presents the entire range of opinions known to him and gives in full all the arguments advanced for each opinion, along with objections to those arguments and responses to the objections; only in the context of such a complete account of the debate surrounding the question does Āmidī offer his own opinion, if he has one, along with the arguments supporting it.

This is not to say that his discussion of a particular question is always lengthy. Minor questions might receive scant attention in learned circles such that a whole debate could be comprehended within a single page. Major questions, on the other hand, could not but engage the attention of all the greatest minds, thus resulting in a debate of great magnitude, requiring many pages of discussion in a work aspiring to completeness. Comprehensiveness was, of course, a goal shared by all who attempted to write in a general way about topics in theoretical jurisprudence; Āmidī's greatness lies in large part in his ability to realize this goal to a greater extent than any of his predecessors or contemporaries. Even the *Kitāb al-mahsūl* of Fakhr al-Dīn al-Rāzī, Āmidī's renowned contemporary and fellow-theologian, does not quite match the vastness of the *Ihkām*, although it ranks with the *Ihkām* as one of the major works in Islamic theoretical jurisprudence. These two works in fact mark the end of an era in the development of the speculative-theological variant of that science. Thereafter, as if the idea of comprehensiveness had been realized to an unsurpassable degree, writers began to turn their attention more to condensation of, and commentary upon, what had been previously written.

It is a tribute to the achievement of Āmidī and Rāzī that their works were, according to Ibn Khaldūn,¹⁷ the primary basis for two important later compendia of jurisprudence, the *Minhāj al-wusūl* of Baydāwī (d. 685/1286) and the *Mukhtasar al-muntahā al-usūlī* of Ibn al-Hājib (d. 646/1248), upon the latter of which Ījī (d. 756/1355), the paragon of later Muslim theologians, commented. Considering the great popularity of these compendia among later generations of Muslims and the volume of commentaries written upon them, we can see that the influence of Āmidī and Rāzī—especially Āmidī, by virtue of his greater comprehensiveness—extends far indeed across the centuries. It

is a further tribute to the greatness of Āmidī in particular that the *Ihkām* has been published in several different editions during the present century and continues to be widely studied among Muslim religious scholars.

Āmidī's comprehensiveness has two different dimensions. On the one hand, he stands within the literary history of Islamic theoretical jurisprudence as the master amalgamator of all that was deemed to be worth knowing in the literature that preceded him, especially that produced by adherents of the speculative-theological tradition. The *Ihkām* is thus a kind of sea in relation to which the previous literature forms a gigantic tributary. Within the tributary flow not only the works of Āmidī's great predecessors within the Ash'arī/Shāfi'ī camp but also, further upstream, the works of the great Mu'tazilī masters, especially 'Abd al-Jabbār and Abu'l-Husayn, through whom Āmidī may have acquired much of his information concerning earlier Mu'tazilis.

But in addition to standing within a literary history, Āmidī, though living within an increasingly literary culture, stands within an oral tradition that this culture had not yet entirely abandoned. For the science of theoretical jurisprudence was still being transmitted, to a large extent, through ongoing live debate of issues in which scholars, seeking to advance their opinions and refute those of others, relied at least partly on what they had learned directly from their teachers and committed to memory. It is difficult to determine, without having access to the public and private libraries available to learned men of the time, just how much in a great work like the *Ihkām* comes from literary sources and how much from live sources. Since literature had for at least three centuries been fast absorbing oral tradition, we may suppose that literary sources predominated. Yet live sources no doubt still played a role, particularly in respect to ideas of more recent vintage. This absorption of oral tradition constitutes the second dimension of Āmidī's comprehensiveness. We should, in this connection, bear in mind that the energies of the learned were always focused in any case on live debate, that it was principally in the arena of ongoing disputation that they proved their intellectual worth to their contemporaries, and that the literature was geared largely to equipping them to perform effectively in live debate. It is virtually undeniable that in situations of live debate learned persons of Āmidī's ilk would have learned much directly from each other.

With the *Ihkām*, two features of the speculative-theological tradition within Islamic theoretical jurisprudence come to fruition. The first is the tendency, mentioned above, to construct this science on the Aristotelian model, a tendency first visible in the writings of Juwaynī though not necessarily without antecedents among earlier Ash'arī and Mu'tazilī thinkers. With

Juwaynī and his disciple Ghazālī, this tendency goes hand in hand with an incorporation of Aristotelian deductive logic into theoretical jurisprudence. It is Ghazālī even more than Juwaynī who is commonly regarded as the great champion of Aristotelian logic, through whose influence that logic found its way into the fabric of Muslim theology. Ghazālī's major jurisprudential work, *al-Mustasfā fī 'ilm al-usūl*, in fact includes a summary of Aristotelian logic in its introductory section. Looking at the subsequent literature of the science, however, including the *Ihkām*, we find that Aristotelian logic remained peripheral to the discussion of substantive issues and that the real legacy of the *Organon* is to be found in the structuring of the science.

The influence of Aristotle may be clearly seen in the opening pages of the *Ihkām*.¹⁸ Any science, for Āmidī, embraces four things: a subject matter (*mawdu'*), an end (*ghāya*), an agenda of topics or issues to be discussed (*masā'il*), and a body of postulates or starting principles (*mabādi'*). Before setting about to define what these are in the case of theoretical jurisprudence, however, Āmidī deems it necessary first to define something more fundamental—the phrase *usūl al-fiqh*, which is, as we have noted, the Arabic designation of the science we are calling theoretical jurisprudence. In reading these first pages of the *Ihkām*, we discover a great deal of overlap between his definition of this phrase and his definitions of the subject matter and topics of discussion of theoretical jurisprudence.

Since the phrase *usūl al-fiqh* is complex, consisting of the two components *fiqh* and *usūl*, Āmidī's definition entails two stages, defining first *fiqh* and then *usūl*. Āmidī's definitions of these two terms do not reflect a special interest in law as opposed to morality. Rather, they reflect the blending of law and morality that, as we have noted, was typical of medieval Muslim thought. I shall first consider these definitions as they are presented to us and then how they may be recast in such a way as to reflect our interest in law.

"*Fiqh*," says Āmidī, "is the knowledge, resulting from reasoning and demonstration, of a body of *al-ahkām al-shar'īya al-furū'īya*."¹⁹ The *ahkām*, we have said, are the divine categorizations of human acts. *Shar'īya* qualifies these categorizations as constituting the Shari'a. *Furū'īya* is a further qualification, the one most difficult to convey in English. It is an adjective built upon the noun *furū'* (singular *far'*), which literally means "branches." This is the term customarily used to designate the Shari'a categorizations considered as outcomes of scholarly deliberation over the revealed or divinely sanctioned indicators. The indicators are, in relation to these humanly articulated categorizations, "roots" (*usūl*: the word is here taken in its most literal sense). The categorizations articulated by scholars, according to this imagery, grow out of the indicators over which scholars deliberate. The human scholar does not in

any deliberate way create these categorizations; he is but the husbandman, as it were, who facilitates their sprouting.

We may accordingly render Āmidī's definition of *fiqh* as follows: "*Fiqh* is the knowledge, resulting from reasoning and demonstration, of those divine categorizations of human acts that are mediated to us through revealed or divinely sanctioned indicators and thus constitute the Shari'a." While this, in my opinion, does justice to Āmidī's language, it should be noted that the term *furū'iya* carries a further connotation that these words fail to convey. *Asl* often refers, in the usage of Muslim religious scholars, to what is general, or principal, in contrast to what is specific and concrete, which is termed *far'*. One may say that the revealed and divinely sanctioned indicators function as a principle in relation to which the articulations of the divine categorizations by scholars are the concrete application or realization. *Furū'iya* thus carries the sense of "applied" or "concretized."

Āmidī notes that in defining *fiqh* as a kind of knowledge he is removing the term somewhat from the sphere of ordinary usage, in which it means "understanding" in the broad, unqualified sense of that word. This does not mean that our earlier characterization of *fiqh* as a human understanding of the Shari'a is erroneous. As Āmidī makes clear, knowledge is subsumed under the more general heading of understanding, being a specific kind of understanding—that acquired by learned persons, or scholars, through rational investigation. In contrast to this understanding stands that of mere commoners, which does not constitute knowledge. Āmidī here reflects the rigorous use of the term "knowledge" (*ilm* in Arabic) that was current among medieval Muslim thinkers. The only knowledge worthy of the name was the knowledge acquired through the methods of inquiry laid down in the Islamic sciences; since only scholars delved into their sciences in a sustained manner, they alone deserved to be called "knowledgeable": the Arabic word for scholar is, in fact, *ālim*, "knower." Thus *fiqh* is an understanding of the Shari'a in an elevated sense of the term that places the one who possessed such understanding in the camp of the knowledgeable and learned.

The understanding that commoners have constitutes, according to Āmidī, mere opinion, and *fiqh* is definitely not opinion. But this is not to say that the opinion of scholars has no relevance to *fiqh*. Āmidī here makes a statement of the utmost importance, the full significance of which will become clear later in this book.²⁰ He says, seemingly qualifying his definition of *fiqh* rather considerably, "*Fiqh* is knowledge of the divine categorizations, or knowledge, based on incontestable perception, of what constitutes [valid] conformity to those categorizations even though the categorizations themselves be a matter of opinion."²¹ I take this statement, which is somewhat obliquely worded in Arabic,

to mean: “*Fiqh* is the knowledge of the divine categorizations, or rather—to be more precise—it is the knowledge, based on sure grounds, of the obligation to accept as authoritative the articulations of the divine categorizations by human scholars even when these articulations represent the mere opinion of these scholars.” In this statement Āmidī seems to back away from the rigor implied in his first definition of *fiqh*. He wants to find a place for knowledge in *fiqh* but at the same time wants *fiqh* to embrace the *fallible* understanding of the divine categorizations that scholars arrive at as a result of their deliberations, an understanding that often takes the form of mere opinion. Thus *fiqh* is, for Āmidī, knowledge, though not quite a knowledge of the divine categorizations, since knowledge entails certainty, and absolute certainty about the divine categorizations is seldom achieved. Rather, *fiqh* is knowledge in a very qualified sense: it is the knowledge that the articulations of the divine categorizations by human scholars, no matter how fallible and tentative they may be, must be accepted as a valid reference point for human conduct. This redefinition of *fiqh* allows it to become for all practical purposes the fallible understanding of the Shari‘a that is represented by the articulations by human scholars of the divine categorizations of human acts. My earlier description of *fiqh* as the body of human articulations of the Shari‘a therefore accords perfectly well with Āmidī’s definition of *fiqh* as thus qualified.

Having defined *fiqh*, Āmidī turns to *usūl*. An *asl* (singular of *usūl*) is that upon which something else depends for its realization (as a branch of a tree depends for its growth upon the tree’s roots, to employ the metaphor the term conveys). In relation to *fiqh*, the term *usūl* designates all those things that are required for the emergence of *fiqh*. It is often translated as “principles,” although in my estimation “foundations” somewhat better conveys the sense of *usūl*. Āmidī defines *usūl al-fiqh* as “the indicators (*adilla*) upon which the understanding of the Shari‘a is based, the ways in which those indicators function as indicators of the divine categorizations, and the considerations which pertain to the role of the scholar who employs those indicators in the actual formulation of the divine categorizations, all of which matters are treated in a general [or purely theoretical] way, not in relation to specific instances.”²² This, again, is a free and expanded rendering of the Arabic but one, I think, that does justice to Āmidī’s thinking.

The reader will observe that the term *usūl* includes within its meaning much more than the indicators upon which *fiqh* is based, that is to say, the indicators of the divine categorizations. While the term is frequently used as a designation for those indicators (hence the common translation “sources of *fiqh*”), here it refers comprehensively to the entire body of theoretical and methodological principles that underlie the work of articulating the Shari‘a.

I shall now attempt to rephrase Āmidī's definitions of *fiqh* and *usūl al-fiqh* in such a way as to reflect our special interest in law. *Fiqh*, in respect to its law side, is the knowledge, resulting from reasoning and demonstration, of those rules of law that are mediated to us through revealed or divinely sanctioned indicators and that constitute Shari'a law. Or, to incorporate Āmidī's important qualification, it is the knowledge, based on sure grounds, of the obligation to accept as authoritative the articulations of the rules of law by human scholars even when these articulations represent the mere opinion of these scholars. This qualified definition allows us to regard *fiqh* as embracing the scholars' fallible understanding of the law as represented by their articulations of it. As for the phrase *usūl al-fiqh*, it refers, from a legal point of view, to the indicators upon which the understanding of the law—that is to say, the articulation of it—is based, the ways in which those indicators function as indicators of the rules of law, and the considerations that pertain to the role of the scholar who employs those indicators in attempting to articulate the law—all of which matters are treated in a general (or purely theoretical) way, not in relation to specific rules. The science which bears the name *'ilm usūl al-fiqh* may thus quite appropriately be called, in respect to its law side, theoretical jurisprudence, just as the science which bears the name *'ilm al-fiqh* may, by virtue of its concern with the articulation of specific rules of law, appropriately be called practical jurisprudence.

We may now turn to Āmidī's definitions of those matters that are entailed in the science of theoretical jurisprudence (*'ilm usūl al-fiqh*) considered as a formal science along Aristotelian lines. As indicated above, a science must have a subject matter, an agenda of topics to be discussed, a body of postulates, or starting principles, and an end. The subject matter of any science is, according to Āmidī, the thing whose accidental characteristics (or conditions: *ahwāl*) are under investigation in that science. Only accidental characteristics can be a proper object of investigation since essential characteristics are embodied in the very conceptualization of the subject matter, and conceptualization of a subject matter must precede investigation. As the proper object of investigation of the science, these accidental characteristics constitute the topics to be discussed. The Arabic term for these topics is *masā'il*, which may be translated as "problems," "issues," or "questions." The accidental characteristics of a given subject matter constitute "issues" in the sense that they are *ab initio* open to question and must therefore be ascertained through demonstration. All demonstration within a given science presupposes certain ultimate premises, or starting principles, which consist of definitions or propositions taken from other sciences or accepted as self-evident. The benefits that result from the science constitute its end.

In the case of the science of theoretical jurisprudence, the subject matter consists of the indicators upon which the understanding of the law is based, that is to say, the indicators of the rules of law. The accidental characteristics of these indicators constitute the *masā'il* of the science, the topics to be investigated or issues to be discussed. The end of this enterprise is the attainment of a knowledge of the rules of law, which constitutes a benefit in that it leads to happiness both in this life and in the hereafter. The starting principles, or postulates, of the science include definitions and propositions drawn from speculative theology (*kalām*), practical jurisprudence (*fiqh*), and Arabic linguistic science (or, as I prefer to call it, the science of the *Lughā*).

The term “characteristics” is admittedly somewhat vague and does not do full justice to the Arabic term *ahwāl* (sing. *hāl*). Judging from the contents of the *Ihkām* as a whole, we should no doubt regard the term *hāl* as applicable to anything that “is the case” with respect to the subject matter at hand (the indicators of the rules of law), but does not enter into the definition of that subject matter. In attempting to resolve the “problems” of a given science, the investigator is seeking to determine what is the case with respect to the subject matter. “What is the case”—that is, the *hāl*—is a problem inasmuch as different individuals may have different opinions about it. We may, for example, consider the problem of the import of the imperative form of verbs (*ifʿal*), which many scholars take to be an important indicator of the rules of law. Some say, however, that it indicates, not a rule of law, but a recommendation. (There are, as we shall later see,²³ still other views, which I shall ignore at this point.) Each party in the debate is affirming a view as to what is the case with respect to the *ifʿal* form. As additional individuals join the debate, each does his best to work out his own view and thus to ascertain a *hāl* to his satisfaction.

Āmidī's contributions to the development of the speculative-theological tradition within Islamic theoretical jurisprudence were the product of a distinguished and eventful scholarly career.²⁴ He received his first instruction in *fiqh* from Hanbalī teachers in his native town of Āmid, in eastern Anatolia. While still a young man, he journeyed to Baghdād to continue his study of Hanbalī *fiqh*, along with Qurʾānic recitation and *hadīth*. This Hanbalī influence would undoubtedly have augured, to anyone who knew Āmidī at this point in his life, a future orientation toward a literalist and antispeculative form of Islam. On the other hand, it was a Hanbalī teacher who first introduced him to the art of disputation, of which Āmidī was to become a renowned master and which he would later carry into the realm of theology, even though the Hanbalīs themselves permitted it only within the realm of jurisprudence. While still a student in Baghdād, Āmidī joined the circle of a famous Shāfiʿī teacher, Ibn

Fadlān, under whom he continued to study disputation along with other subjects, including theoretical jurisprudence. As a result of his association with Ibn Fadlān, Āmidī transferred his allegiance to the Shāfiʿī school and remained a member of that school for the rest of his life.

Trouble brewed for Āmidī when, while still a student in Baghdād, he began to study philosophy privately with a Christian tutor at a monastery near that city. Since philosophy was in disrepute among the majority of Muslim religious scholars of Baghdād, Āmidī quickly found himself ostracized and maligned and as a result left Baghdād in search of a more hospitable environment. He first went to Syria, then under the rule of Salāh al-Dīn, where he on one occasion met the mystic and philosopher Suhrawardī; after continuing to encounter difficulties because of his interest in philosophy, he proceeded to Egypt in 592/1196. By that time Salāh al-Dīn had died and the rule of Egypt had passed to his son ʿAzīz, for whom Āmidī composed a short compendium on theology. Āmidī soon rose to prominence among the scholars of Cairo, demonstrating to all the breadth of his knowledge and the excellence of his skills in disputation. His monumental theological treatise, the *Abkār al-afkār*, is a product of this period. Eventually, trouble again arose for him: a group of scholars, either jealous of his accomplishments or perturbed by his rationalist leanings, mounted a campaign of vilification against him. After having spent two productive decades in Egypt, Āmidī was once again compelled to move on. He elected to return to Syria.

Arriving in Syria around 612/1215, Āmidī lived first for a time in Hamāh and then in Damascus, where he remained until his death in 631/1233. It was during these later years in Damascus that his interest in theoretical jurisprudence began to surge, leading to the composition of the *Ihkām* and the shorter compendium, *Muntahā al-sūl fī ʿilm al-usūl* (hereafter referred to as the *Muntahā*). At the same time, he remained active in disputation on theological and jurisprudential matters, confronting some of the ablest scholars of the period. However, even in these last years of his life he was not spared the calumny of rivals who persisted in casting suspicion on his rationalist proclivities, and he was obliged to spend the final months of his life as a prisoner in his own home.

One final word is in order before I bring this introduction to a close. I have said that the focus of this book will be upon the law or jurisprudence side of the law-morality/jurisprudence-ethics dualism that characterizes the science of *usūl al-fiqh*; and that this focus is strictly ours—the medieval Muslims cannot be expected to have shared it. On the other hand, one does not long peruse the literature of this science before coming to the realization that positive law and the concerns of jurisprudence are very close to the heart of

the Muslim authors. One senses that these authors are continually keeping an eye on the courtroom and upon the needs of judges in applying rules to cases brought before them. In fact, if anything, the preoccupation with this-worldly adjudication is, except in the area of ritual law, much greater than any preoccupation with the Day of Final Reckoning. Our authors display much greater concern with those categories that lend themselves to a legal application—"obligation," "prohibition," "validity," "nullity"—than with those categories whose application is confined to the realm of morality. This is evident from the examples they give and the cases they cite. They are not, in short, pietists or mere moralists with heads held high above the clouds. They are very much down-to-earth jurisprudents with instincts shaped by those realities of the everyday world that the law must continually confront.

POSTULATES

It is in the section of the *Ihkām* that deals with the starting principles, or postulates, of the science of theoretical jurisprudence (*‘ilm usūl al-fiqh*) that the influence of Aristotle on Āmidī’s structuring of that science is most conspicuous. The starting principles are the premises upon which theoretical jurisprudence is *logically* dependent. Just as, in a syllogism, a conclusion proceeds from premises, so an entire science must proceed from a body of premises. These consist of all that is taken for granted in that science, whether in the way of axioms that by their very nature do not require demonstration or in the way of principles whose truth has been demonstrated in other sciences. Insofar as a science draws its postulates from other sciences, it is logically subordinate to those sciences.

As we observed in the introduction, the postulates of the science of theoretical jurisprudence derive from three sciences, according to Āmidī: speculative theology, practical jurisprudence (*fiqh*), and Arabic linguistic science (or, as I prefer to call it, the science of the *Lughā*). They are accordingly classified under three headings: theological postulates (*al-mabādi’ al-kalāmīya*), *fiqh* postulates (*al-mabādi’ al-fiqhīya*) and linguistic (*Lughā*-related) postulates (*al-mabādi’ al-lughawīya*). The three sciences that supply these postulates thus have a logical priority over the science of theoretical jurisprudence. While Aristotelian logic has a more or less marginal role in the actual discussions of substantive topics in the *Ihkām*, it plays a major role in the positioning of theoretical jurisprudence within the hierarchy of Islamic sciences. It is with this positioning that one entire main section of the *Ihkām*, approximately one-eighth of the whole work, is concerned.

THE THEOLOGICAL POSTULATES

Of the three types of postulates of the science of theoretical jurisprudence, the theological postulates receive the briefest treatment in the *Ihkām*. This is not because they were less important for Āmidī than the other two types. Rather, one gathers that Āmidī gives somewhat scant attention to them in the *Ihkām* for the simple reason that he wrote a major work on theology, his *Abkār al-afkār*, so that anyone who wished to explore the theological postulates further could consult that work or Āmidī's shorter compendium of theology, the *Ghāyat al-marām fī 'ilm al-kalām*. On the other hand, he did not produce a single work on either *fiqh* or the Arabic linguistic sciences; therefore, whatever he intended to say concerning the *fiqh* postulates and the Lughā-related postulates had to be said within the pages of the *Ihkām*.

On turning to the section in the *Ihkām* on theological postulates,¹ we find that Āmidī is, in that section, primarily concerned with the definition of certain terms: “indicator” or “proof” (*dalīl*), “reasoning” (*nazar*), “knowledge” (*'ilm*) and “opinion” (*zann*). Needless to say, the concepts expressed by means of these terms play a crucial role in theoretical jurisprudence, and we shall consider Āmidī's discussion of them presently. It is clear, however, that Āmidī regards the science as indebted to theology for much more than the definitions of such terms. In the first pages of the *Ihkām* he states that theoretical jurisprudence is dependent on theology in the sense that “the knowledge that the indicators of the divine categorizations of human acts [that is to say, adopting a jurisprudential point of view, the rules of law] are indeed indicators of those categorizations, that they constitute a revelation from God, presupposes a knowledge of God's existence and attributes and a knowledge that the Apostle of God is truthful with respect to his claim to be a bearer of divine revelation and other matters [*ghayr dhālik*] that are known only through theology.”² The phrase “and other matters” allows the whole range of affirmations arrived at in theology to be considered as constituting postulates of theoretical jurisprudence. The relevance of the entire science of theology

to the investigations carried on within theoretical jurisprudence is confirmed by what Āmidī says in a much later section of the *Ihkām* concerning the qualifications required of a mujtahid, that is to say, a scholar who takes upon himself the task of articulating the rules of law. Such a scholar "must have a knowledge of God's existence, of the attributes which inhere necessarily in him, and of the perfections that are his by right. He must know that God is the One Who exists necessarily through his essence, that he is living, knowing, powerful, willing and speaking such that the idea that he imposes obligations will become conceivable. He must furthermore believe in the Apostle and in the Sharī'a that he brought [not as an act of blind faith but] by virtue of the dazzling miracles and wonders that occurred by the hand of the Apostle.³ The mujtahid's knowledge must, in other words, embrace the main substance of what is affirmed in theology.

The section in the *Ihkām* on the theological postulates, on the other hand, deals with matters that are not strictly theological in the ordinary sense. It is important, therefore, that we understand that the Muslim science of theology, as conceived by Āmidī, includes not only substantive theological matters but other matters as well, which fall under the heading of epistemology and methodology. Only if we are aware of both of these two components of the content of Muslim theology can we fully appreciate Āmidī's thinking about the rootedness of theoretical jurisprudence in theology.

The substantive-theological part of Muslim theology is what gives that science its *logical* priority over theoretical jurisprudence. Quite obviously, there cannot be an enterprise of articulating a divine law unless there is a divine being. And it is not sufficient merely to know that a divine being exists; one must know something *about* this divine being—that he is knowing, willing, powerful, speaking, and so on—for only a being possessed of such attributes can be the author of a law. Furthermore, one must know where one must go in order to discover the law; that is, one must be able to put one's finger on something that one may regard as a revelation from God. These matters, along with others that belong within the domain of substantive theology, must be dealt with before the business of articulating the law can even begin.

Since theological investigation necessarily precedes investigation in the legal domain, questions relating to the investigative process itself—that is to say, to the process of acquiring knowledge and therefore to the epistemological and methodological underpinnings of this process—must be discussed in connection with theology. Theology is, in fact, for Āmidī the first proper concern of the human intellect, in relation to which all other sciences occupy a subordinate position. Therefore, the human intellect, if it is adhering to propriety, will have its first serious encounter with questions of epistemology

and methodology in connection with the theological enterprise. Whatever theory of knowledge and methods of acquiring knowledge it sets up at this point will extend to other sciences as well, once its attention is turned to those other sciences.

Since the dependence of theoretical jurisprudence on theology relates to two separate matters, epistemology/methodology and substantive theology, it is fitting to divide the theological postulates⁴ into two categories: epistemological/methodological postulates and substantive-theological postulates. In the remainder of this section, I shall discuss these in that order.

Epistemological/Methodological Postulates

On glancing over the section in the *Ihkām* on theological postulates, we see right away that this section is concerned with the topics that Āmidī takes up at length in the first three of the main sections, called *qawā'id* (sing. *qā'ida*), of the *Abkār al-afkār*: knowledge (discussed in the first *qā'ida*), reasoning (discussed in the second *qā'ida*), and evidence or proof (discussed in the latter part of the third *qā'ida*). The one topic discussed in these sections of the *Abkār al-afkār* (specifically, in the first part of the third *qā'ida*) that does not find its way into the *Ihkām* is definition (*hadd*), though it is obviously of fundamental importance for theoretical jurisprudence, as the many definitions scattered throughout the *Ihkām* (including the section on theological postulates) testify.

Knowledge, says Āmidī, is “an attribute through which the mind of one who possesses this attribute is able to distinguish between the essences of universals (*haqā'iq al-ma'ānī al-kullīya*) in a manner that does not admit of the possibility of contradiction.”⁵ This definition of knowledge emerges as the outcome of Āmidī's pondering over a variety of descriptions and definitions offered by scholars of earlier generations. It is formulated in such a way as to include both divine knowledge and creaturely knowledge. Knowledge relates to the essences of universals, to what universals such as horse, human, fish, and stone are. To know what any universal is means to be able to distinguish it from all other universals. To know what the horse is, for example, means to be able to distinguish it from the human, the fish, the stone, and so on. To know what striking is (as in “Zayd struck ʿAmr”) means to be able to distinguish it from embracing, caressing, pinching, and so on. Universals such as the horse and striking are, of course, present in a great many particulars, but knowledge is, according to the definition as it stands, confined to the realm of universals. The distinguishing of a particular *qua* particular from other particulars is perception (*idrāk*), a function of the senses that is distinct from

knowledge as such. Those who, following Ash'arī, wish to include perception under the heading of knowledge—a practice to which Āmidī seems to have no serious objection and in fact presupposes in his subsequent discussion of “sensory knowledge”—may simply delete the term “universal” from the definition of knowledge: knowledge in this case entails simply distinguishing between the essences of things, whether universals or particulars.

The phrase “in a manner that does not admit of the possibility of contradiction” expresses the quality of certainty that characterizes the knowing mind. Uncertainty exists when the possibility (as opposed to probability) of contradiction, of being wrong, must be entertained. This is in fact what characterizes opinion, distinguishing it from knowledge. Opinion is “the preponderance [*tarajjuh*], in the mind, of one of two possibilities over the other.”⁶ In knowledge, one is certain that *X* is *A*, that it *cannot* be *B*; in opinion, one allows that *X may* be either *A* or *B* but senses that it is *more likely* to be *B*.

Muslim theologians in general, Āmidī included, divided knowledge into two main types: necessary knowledge (*al-ʿilm al-darūrī*) and acquired, or deduced, knowledge (*al-ʿilm al-muktasab*, *al-ʿilm al-nazarī*). Necessary knowledge was commonly defined as knowledge that imposes itself upon the mind. Āmidī quotes Bāqillānī on the subject: “Necessary knowledge is knowledge that attaches itself to the mind of the creature in such a manner that the creature can find no way to detach himself from it.” Āmidī takes strong exception to this approach. The problem with such a definition, in his view, is that it is not sufficiently exclusive since deduced knowledge—that is to say, knowledge which results from reasoning—may be said to impose itself upon the mind once the reasoning has taken place. Āmidī prefers to define necessary knowledge as knowledge that the creature is unable to acquire through reasoning and demonstration.⁷

It may be noted that this definition (like that of Bāqillānī) entails a theological presupposition—that a Creator exists and that all other beings are creatures. The Muslim theologians considered God's knowledge to be distinct from creaturely knowledge, a distinctness linked to the distinctness of Creator from created. Since only creaturely knowledge was divisible into necessary and deduced, it was important to formulate the definitions of these categories in such a way as to exclude divine knowledge. Creaturely knowledge is knowledge that God creates in his creatures. He may create this knowledge either as dependent upon a process of reasoning and demonstration or as independent of such a process. In the former case God creates in the creature an ability to arrive at the knowledge by way of reasoning and demonstration; in the latter case he does not create this ability. When the ability to arrive at

knowledge by way of reasoning and demonstration is present, the knowledge which emerges may be credited to the creature as something he has brought about (though not in the sense that he created it) through deliberate action, namely his reasoning and demonstration. If the knowledge is something that the Creator required of him or urged upon him, then he may be regarded as having discharged a duty. Since the Creator is free to create as he wills, he may create in the creature the ability to arrive at *any* knowledge by way of reasoning and demonstration. Or, conversely, he may create any knowledge in the creature quite apart from this ability. Thus, had he willed that what is presently necessary knowledge be deduced knowledge or vice versa, he could have done this. The distinction between necessary and deduced knowledge is entirely contingent upon the divine will.

The theological aspects of the distinction between necessary and deduced knowledge relate to topics that will be taken up in the next section. The term “acquired” (*kasbī*, an alternative designation for deduced knowledge), in particular, is tied to a topic of great importance in Islamic theology: “acquisition” (*kasb*). It may seem at first glance that, by allowing theological tenets to intrude upon his discussion of an epistemological subject, Āmidī has fallen into a vicious circle. In fact he has not, for it is possible to remove the theological components in his definitions of necessary and acquired knowledge and still have completely coherent categories. We must remember that since the Ashʿarī theologians attributed, as part of their theology proper, knowledge to God but regarded that knowledge as not subject to the distinction between necessary and deduced, they were obliged to define these two categories in such a way as to exclude the divine knowledge. But the Ashʿarī theologians contended that, just as we may perceive through subjective introspection a difference between acts that are conjoined with ability on our part and acts that are not, so we may perceive through subjective introspection the difference between knowledge that is conjoined with ability on our part and knowledge that is not. We are fully aware, for example, that trembling from fever is an entirely different sort of act from shaking hands with another person. Necessary knowledge is on the order of trembling from a fever, deduced knowledge on the order of shaking hands.

In fine, necessary knowledge is knowledge that arises apart from reasoning and demonstration; deduced knowledge is knowledge that arises through reasoning and demonstration. We are all aware through introspection when reasoning and demonstration have occurred in conjunction with the rise of knowledge and when they have not occurred, just as we are all aware when the ability to engage in reasoning and demonstration has been present and when it has not.

Necessary knowledge embraces three subcategories in Āmidī's reckoning: sensory knowledge (for example, one's knowledge that the sky is clear at a particular moment, or that one's stomach is upset), inductive knowledge (for example, one's knowledge that fire always consumes), and axiomatic knowledge (for example, one's knowledge that there is no middle ground between negation and affirmation, that two contraries cannot exist simultaneously, and that the whole is greater than each of the parts).⁸

Axiomatic knowledge has no basis in sensory experience; such knowledge is latent in our minds prior to such experience. It is, in fact, innate; one never finds one's mind to be devoid of it. (Again, from a theological perspective, it would be quite possible for God to create this knowledge as something that emerged out of sense experience or out of reasoning and demonstration. Āmidī is here interested only in what we in fact find to be the case. Looking inward, we find our minds never to be devoid of axiomatic knowledge.)

Sensory knowledge and inductive knowledge, in contrast, both emerge out of sensory experiences, whether they involve the five external senses or the "internal senses." Sensory knowledge is tied to discrete, isolated experiences. I know that the sky is clear at a particular moment in time by virtue of a perception of the sky that I have in that same moment. In this case, the perception entails one of the five external senses, namely, sight. In the case of my knowledge that my stomach is upset, the underlying perception involves my internal senses. Inductive knowledge, on the other hand, emerges over time as the result of a series of sensory experiences. I cannot know from a single experience of seeing something consumed by fire that fire consistently consumes certain kinds of things. Āmidī gives the example of the stability over time of mountains and seas. If I see a mountain or sea on a given occasion, I have no way of knowing whether mountains consistently remain firm or seas consistently fail to dry up. This knowledge can only come from the *repeated* experience of seeing particular mountains and seas.

All three subcategories of necessary knowledge are or become present in us through no deliberate effort arising out of an ability on our part. Axiomatic knowledge is something there within us; we simply become aware of it. Sensory knowledge arises in direct conjunction with sensory experience; we may be able to control what sensory experiences we have, but once they have occurred we have no control over whether knowledge will arise from them. In the case of inductive knowledge, we find in the course of having repeated experiences of the world that opinions arise within us to the effect that certain regularities exist in the world and that, as the same experiences continue, opinion gives way to knowledge. But the process occurs apart from any

deliberate activity on our part involving the exercise of an ability, that is to say, any activity resembling the reasoning that leads to deduced knowledge. In some manner that eludes our scrutiny, a knowledge of the regularities of the world wells up within us at some undeterminable point in our experience of the world over time. We cannot say exactly how it arises; we simply recognize it within us when it is present.

Again, in Āmidī's discussion of inductive knowledge we find an intrusion of a theological consideration. Āmidī calls inductive knowledge "the knowledge of customary matters" (*umūr ʿādiya*). Since, as we shall see later, Muslim theologians—especially the Ashʿarīs—insisted on imposing no limitations on God's freedom, they came to regard the regularities experienced by human beings, not as regularities embedded in a natural order operating independently of the divine will, but as regularities in God's on-going creation of the world. These regularities were subsumed under the category of the divine custom (*ʿādat allāh, sunnat allāh*). Thus the knowledge of regularities in the behavior of phenomena was tantamount to a knowledge of the divine custom. But this is not to say that an epistemological category is intrinsically dependent upon a theological presupposition. Whether one affirmed God's existence or not, one was aware of the presence within one's mind of a knowledge of regularities. The knowledge was simply there. As a result of *later* reflection leading to an affirmation of God's existence, one would come to see the regularities as constituting a divine custom.

From other Muslim authors we learn that some medieval Muslim thinkers speculated that the process of induction entails a covert or "hidden" (*khafī*) reasoning—we might wish to call it, in modern jargon, subliminal reasoning.⁹ Such reasoning proceeded along lines such as the following. It must be the case that fire regularly consumes dry wood, for if this were not the case then there would necessarily have been some variation in our experience of fire: we would have seen fire consume dry wood on some occasions but not on others. The fact that in our experience over time we have never seen fire fail to consume dry wood indicates that fire *always* consumes dry wood. The reason why such reflection had to be regarded as subliminal was that the knowledge of regularities could clearly arise in minds—especially the minds of the uneducated masses—without any conscious effort to engage in such reflection. One had, therefore, to exclude deliberate reasoning—reasoning arising in conjunction with human ability—as a prerequisite of inductive reasoning. This being the case, inductive knowledge arose apart from deliberate human effort and was therefore suitable to be labeled "necessary," at least in the view of Āmidī and others. Some Muslim thinkers, however, hesitated so to label inductive knowledge. These apparently regarded necessary knowledge as

limited to knowledge of the most primitive and immediate kind, namely, sensory and axiomatic knowledge.

The foregoing discussion of the subcategories of necessary knowledge provides an occasion to mention the ramifications that two of these subcategories, inductive and axiomatic knowledge, had for the Muslim understanding of possibility and impossibility. In surveying the multitude of issues that Āmidī deals with in his writings, we discover that prominent among them are two types: these may be called issues of possibility and issues of fact. The former have to do with what is possible quite apart from whether it is in fact the case; the latter have to do with what is in fact the case. Furthermore, the favorite stratagem of the Muslim dialectician in seeking to refute his adversary was the *reductio ad absurdum*, the demonstration that the adversary's position led to impossible conclusions.

From Āmidī's writings it is clear that the intellectual tradition to which he belonged posited two different orders of possibility and impossibility. We may call these the logical and empirical order. The first is rooted in axiomatic knowledge, particularly in the law of noncontradiction and the law of the excluded middle (referred to earlier). A thing is impossible when it is self-contradictory or when it contradicts something known to be the case; otherwise, it is possible. The empirical order of possibility and impossibility is rooted in inductive knowledge. It is empirically impossible for fire not to consume dry wood. This notion of impossibility is usually expressed by means of the phrase "the divine custom makes such-and-such impossible" (*al-ʿāda tuhil...*). Any situation that does not contradict or violate the regularities known through inductive observation is, accordingly, empirically possible. The category of necessity is also included within each of the two orders. Logical necessity makes a conclusion follow from the premises of a syllogistic argument (to be considered shortly), while empirical necessity makes consumption of dry wood follow, as an event in time, the igniting of the wood. The reader will doubtless note, as a point of interest, that medieval Muslim thought in this connection stands in obvious contrast to the tendency of modern Western thought to confine the categories of possible, impossible, and necessary to the logico-mathematical realm.

Before leaving aside the subject of necessary knowledge, we should take note of the fact that many medieval Muslim thinkers included within this category a fourth subcategory: the knowledge of distant or past events that arises out of exposure to wide-scale reporting. Since Āmidī is himself uncertain whether this knowledge should be included under necessary knowledge, he makes no mention of it in his discussion of this category. We shall consider the debate on this issue in a later chapter.¹⁰

We may now turn to deduced knowledge and the process that leads to it—reasoning (*nazar*). Reasoning, according to Āmidī, “is a [particular kind of] rational ordering of matters previously known or accepted by opinion that have some relevance to a matter under investigation, the purpose of this ordering being to produce in the intellect that which has not hitherto arisen, be it a definition or proposition, knowledge or opinion, a valid conclusion (in the sense that the reasoner is aware of the manner of its derivation) or an invalid conclusion.”¹¹ As is clear from this definition, the reasoning process does not necessarily begin with knowledge or end with knowledge; it may begin and end with opinion. When knowledge not already present in the mind is sought, however, the reasoning process is the indispensable means of attaining it. Insofar as the reasoning process is placed at the service of the quest for knowledge, it will involve a movement *from* knowledge *to* knowledge. All reasoning must begin with what is already known. This prior known may itself be the product of previous reasoning, or it may be a necessary known. Where the former is the case, the process of harking back to previous reasoning cannot repeat itself *ad infinitum*. Ultimately, all knowledge arrived at through the reasoning process must be rooted in necessary knowns.

It is significant that the reasoning process may be directed to the attainment of opinion. As we shall observe on numerous occasions, opinion plays an important role in Islamic theoretical jurisprudence, and more often than not the reasoning carried on with respect to issues in that science leads to opinion. This is not to say that knowledge is not always a desideratum, for it certainly is. The point is that Islamic theoretical jurisprudence recognizes that knowledge is not always possible and affirms that in its absence opinion is desirable and far superior to the alternatives, ignorance and doubt.

“Evidence” and “proof” are somewhat inadequate renderings of the Arabic term *dalīl* since neither does full justice to the basic sense of the term and neither quite covers the full range of its uses. German is more fortunate in this respect; it has the word *Beweis*, which is a much nearer equivalent of *dalīl*. Āmidī begins his discussion of *dalīl* by noting that in ordinary usage it means *dāll*. Since *dāll* is the nomen agentis (*ism al-fā’il*) of a verb meaning “to indicate, show, point to,” I take “indicator” to be the most precise available English rendering of *dalīl*. Although this rendering becomes awkward in some instances, it is, I think, a reasonably felicitous way of expressing the sense of *dalīl* that predominates in Islamic theoretical jurisprudence, which I will explain presently.

In the *Abkār al-afkār* Āmidī discusses the concept of *dalīl* under the heading of “the means whereby one achieves one’s objective in the reasoning process” (*al-turuq al-muwassila ila ‘l-matlūbāt al-nazariya*), which may without

serious injustice be transformed into "the instruments of reasoning." Also included under this heading is definition. The objective of all reasoning is the attainment of knowledge or opinion that may be expressed in propositional form. Every proposition is, however, a combination of terms, subject and predicate. Since these represent single concepts, it is necessary that the concepts be understood in order for the proposition to be understood. Since concepts are understood through definition, definition constitutes an instrument of reasoning.

The heart of the reasoning process entails, however, the use of the other instrument, the *dalīl*. In fact, the Arabic term for reasoning, *nazar*, is often used in apposition with *istidlāl*, which is perhaps best translated as "the employment, or appropriation, of a *dalīl*." Āmidī notes that there are two principle types of *dalīl*, the rational *dalīl* and the transmitted *dalīl*. His discussion of *dalīl* in the *Abkār al-afkār* is taken up almost entirely with the former; the latter is only briefly mentioned.¹²

In the context of theology, the rational *dalīl* plays a much greater role than the textual; in the context of jurisprudence quite the reverse is true. The rational *dalīl*, we learn, is composed of two premises—a major and a minor premise—and a conclusion. It is, in other words, the syllogism. Āmidī gives the following example. The world is composite; every composite thing has a beginning; therefore the world has a beginning.¹³ Although a syllogism may be described as an indicator in the sense that it indicates—points to—a previously unknown truth, this is not our customary way of describing the function of a syllogism. We do use a related word, "demonstrate," which is a viable translation of the Arabic verb *dalla*, but unfortunately we do not have a related word in English that conveys the sense of *dalīl* as applied to the syllogism. "Demonstration" conveys more the sense of *istidlāl*. It is thus probably best to translate *dalīl*, in instances where it is used of the syllogism, as "proof." One may speak more comfortably in English of rational proofs than of rational indicators. Āmidī adds appropriateness to this translation of *dalīl* by noting that, according to the theologians, only that which produces knowledge may properly be called *dalīl*. If we likewise restrict the term "proof" to that which produces knowledge, then we establish an equivalence between *dalīl* and "proof."

A syllogism thus constitutes a *dalīl*, or proof, only if its premises are beyond doubt such that its conclusions will be unassailable and thus representative of knowledge. Syllogisms whose premises belong within the realm of opinion can lead to nothing higher than opinion. However useful they may be, they do not, according to this way of thinking, constitute *dalīl*, or proof, but rather *amāra* ("clue" or "hint"). On the other hand, notes Āmidī,

the jurists apply the term *dalīl* more liberally to whatever produces either knowledge or opinion.¹⁴ Given this broader application, the translation of *dalīl* as “proof” becomes somewhat problematic; “evidence” or “indicator” becomes more appropriate.

A *dalīl* such as a syllogism is an “instrument of reasoning” in that it exists apart from the reasoning process as a mechanism ready to be put to use whenever reasoning is to be undertaken. The *dalīl* may not therefore be identified with the reasoning process as such. Reasoning is a subjective process that takes place in individual minds, whereas a *dalīl* has an objective existence over and above individual minds. The rational *dalīl* (i.e., the syllogism) is essentially a processing machine or format into which various sorts of data can be fed in the course of actual reasoning.

When the term *dalīl* is qualified as a transmitted *dalīl*, it can, I think, be somewhat more felicitously translated as “indicator,” even if this is not as yet the usual practice of Islamicists. The more common rendering, “evidence,” is quite acceptable, although in my estimation it does not as adequately convey the sense of *dalīl* for the principal reason that it does not have any connection with a cognate verb, as *dalīl* does with *dalla*. An indicator is something that indicates: here the connection with a cognate verb exists, and the *active* functioning of the *dalīl* is expressed. Furthermore, “evidence” does not have a proper plural, as “indicator” does, and thus does not provide a way to distinguish between *dalīl* and *adilla*.

A transmitted indicator is an indicator that consists of, or is embedded in, a text (*matn*) or which arises out of a text. It is by virtue of this association with a text that it is called a *transmitted* indicator, for a text is a body of words that is transmitted orally across space and time. While medieval Islamic civilization was rich in written literature, it nonetheless regarded the text par excellence as an orally transmitted datum. This is a point we shall have occasion to elaborate upon later.¹⁵ We shall also consider later exactly what sorts of indicators the Muslim jurists placed in this category.¹⁶ Here we are concerned with the transmitted indicator as a general concept. Insofar as a transmitted indicator consists of, or is definitely embedded in, a text, it may also be described as a textual indicator. Āmidī in fact occasionally makes use of the term *al-dalīl al-lafzī*, “the verbal indicator,” that is to say, the indicator which is made up of words (vocables). There is, however, a type of transmitted indicator—to be considered later—which is perhaps best described as a paratextual indicator.¹⁷ This type of indicator, while grounded in texts, is not in and of itself strictly textual.

There are two Arabic terms for “transmitted”: *samī* and *naqlī*, the two terms being more or less interchangeable. *Samī* is the term favored in Āmidī’s

theological writings, whereas *naqlī* is favored in his jurisprudential writings. *Sam'ī* may be somewhat more literally translated as "aurally received." *Naqlī*, on the other hand, clearly means "transmitted." It is related to *naql* "transmission," which resembles the Latin *traditio* "handing over." Together *naqlī* and *sam'ī* represent the two poles of the transmissional synapse, delivery and reception.

Transmitted, or textual, indicators are instruments of reasoning only insofar as they carry authority (*hujjiya*), and in employing them in the reasoning process one is appealing to authority. The rational *dalīl*, in contrast, is grounded in the data of sensory experience, both concrete and generalized (through induction), which it subjects to logical operations consistent with the axioms undergirding all rationality: there is in it no *appeal* to authority. On the other hand, the authority of all transmitted indicators must, as we shall see, be demonstrated on rational grounds. The transmitted indicators are thus not, in the final analysis, independent of rational proofs. A text in and of itself may or may not carry authority. Whether it does will depend on whether a case can be made for that authority on grounds that are ultimately rational.

The mechanisms involved in the process of reasoning through the instrumentality of transmitted indicators (once their authority has been established) are entirely different from those that are involved in rational demonstration (syllogism). Transmitted indicators are abundant and often ambiguous and contradictory. In reasoning with them one makes choices between indicators—this one over that—and then makes a case for one's choice. Considerations relating to the authenticity of a text and its meaning are an important part of these deliberations. The final aim of the reasoning process is to determine the import of a text with respect to a particular matter under investigation. It is, in fact, appropriate to speak of "reasoning from texts" as a distinct kind of reasoning. It is distinct from purely discursive reasoning in that the latter aims at the attainment of knowledge or opinion derived ultimately, via syllogism, from sensory experience, whereas it aims at knowledge or opinion imparted by texts. Reasoning from texts presupposes that there is a body of knowledge or opinion that cannot be obtained from discursive reasoning alone but must be supplied by texts. Although Āmidī's definition of reasoning, noted above, seems to favor discursive reasoning, in fact it embraces reasoning from texts inasmuch as this reasoning is an extension of discursive reasoning, a point to which I shall return later.¹⁸

Both the *dalīl 'aqlī* and the *dalīl naqlī*, it will be noted, may be productive of either knowledge or opinion. Since, however, the *dalīl 'aqlī* more readily leads to knowledge than does the *dalīl naqlī*, for reasons that will become clear in

due time, it will generally be appropriate to call the former “rational proof” in line with what was said above concerning “proof” as a translation of *dalīl*, and the latter—which more often than not leads to opinion, especially in the sphere of law—“transmitted indicator” rather than insisting on consistency in the translation of *dalīl*. By the strict theological definition of *dalīl* (mentioned above), a transmitted datum that leads to opinion should not be considered a *dalīl*. However, Āmidī himself seems to back away from this strict definition in using, throughout the *Ihkām*, the term *dalīl zannī* for the transmitted data that lead to opinion.

Neither in the *Ihkām* nor in the *Abkār al-afkār* does Āmidī take us into a subject which is closely related to that of reasoning and the instruments of reasoning, namely, dialectic. The original readers of these works understood very well that reasoning, whether by way of rational proofs or by way of textual indicators, takes place within a setting of dialogue or debate among scholars. It is noteworthy that the Arabic word *nazar*, “reasoning,” is a cognate of one of the terms used to designate disputation: *munāzara*; one engages in *nazar* in the context of *munāzara*. Interaction between minds was a *sine qua non* of medieval Muslim scholarship. Any scholar necessarily sought to communicate his reasoning about religiously important matters to other scholars. This was motivated partly by the desire to share with others findings that might benefit the community, partly by the wish to test the validity of one’s findings by exposing them to challenge. The research of George Makdisi has shown that it was in scholarly debate that an individual Muslim scholar was required to prove his worth.¹⁹ Debates could become acrimonious, particularly when an especially brilliant younger scholar challenged his more-seasoned elders. Such acrimony may well have contributed to Āmidī’s being ostracized by the scholarly communities in Baghdād and Egypt. He seems quite early in life to have achieved excellence in the art of disputation. The *Ihkām* was in fact to be praised by later generations especially for the thoroughness of its dialectics.

As developed by the medieval Muslims, the art of disputation had its own body of rules and procedures. These were spelled out, not in works of theology as such, as permeated with dialectic as those works were, but in a separate genre of literature. The most sustained study thus far of the development of this genre is found in an unpublished doctoral dissertation written by Larry Benjamin Miller.²⁰ This literature culminated in the rise, not long after Āmidī’s death, of a highly developed theory of disputation called *ādāb al-baḥth*. The first major work on this was a treatise by Shams al-Dīn al-Samarqandī (fl. 675/1276). As Miller notes, the Muslim theologian placed more confidence in dialectic than did philosophers in the Aristotelian tradition, emphasizing its

value as a means of attaining truth, while the philosophers dissociated it from demonstration as such, relegating it to an inferior position as an art more interested in defeating an adversary than in discovering truth.

One may add to this another consideration. The medieval Muslim scholars were dedicated not only to the pursuit of hard knowledge but also—in situations where hard knowledge was not forthcoming—to the pursuit of viable opinion. This was especially true in the sphere of law. The academia of medieval Islam thus became—to use an expression dear to the modern West—a veritable marketplace of ideas. Fresh ideas could not be expressed on as wide a range of topics as in the modern West, but within the limits prescribed by convention there could be exceedingly lively exchange. A scholar could adhere to an opinion only so long as he was confident that it could be shown, in the context of debate, at least as worthy as that of other scholars, if not superior.

Āmidī's writings are all rooted in the atmosphere of Muslim scholarly debate. One often gets the feeling in reading his works that they constitute, at least in part, records of debates in which he himself participated, memoirs of a master dialectician. There are, of course, frequent references in these works to the views of scholars long since dead and to their writings, but many of these views in all probability continued to be aired in on-going live debate. It is therefore, as suggested earlier, difficult to draw the line between the part of Āmidī's writings that emerged from the actual debates in which he participated and the part that emerged from his private study of earlier writings. In any case, Āmidī clearly wrote largely to meet the practical needs of scholars—particularly younger ones in pursuit of a successful career—who wished to prove their mettle in scholarly debate. In fact, his shorter works—especially the *Ghāya* and the *Muntahā*, which are abridgements of the *Abkār al-afkār* and the *Ihkām*—were probably intended as manuals to be used by students in memorizing the essentials of arguments that could be useful in debate. This rootedness of Āmidī's works in live disputation militated against the development of an essay style of writing such as we moderns are accustomed to. Āmidī's writings are not very readable. I shall state the point more strongly: they are positively unreadable. The reason for this is that they were not meant to be read, as we understand reading. They were meant rather to be studied and, insofar as possible, memorized and then *put to use* in debate.

The rootedness of Āmidī's works in ongoing scholarly debate is evident, not only in the burdensome nonessay format that he consistently follows (on which more will be said presently), but in the agenda of topics or issues he discusses, the *masā'il*. Strictly speaking, a *mas'ala* (singular of *masā'il*) is an

issue that has arisen out of a history of debate and may still be debated, if there are willing adversaries. The *masā'il* are thus not issues that Āmidī himself conjures up in his mind, to be discussed in essay fashion with primary emphasis on his own ideas. They are rather issues that he inherits from generations of prior debating. In no sense does Āmidī set his own agenda. To my knowledge, there is no evidence in any of his writings that he ever proposed a single fresh issue. Of course, issues in any debating process must originate with someone; but it appears that by Āmidī's time all the issues considered to be worth debating had already been raised. This fact tells us something of the greatest importance about Islamic theoretical jurisprudence as developed by Āmidī and other theologians: its entire range of issues is determined by a long history of scholarly debate.

The great bulk of the *Ihkām* consists of discussions of these issues, each of which presupposes a fixed format suited to the requirements of scholarly debate. Āmidī does not always conform strictly to this format, but there is no doubt that it is always present in his mind as a model to be approximated as closely as possible. In many instances he adheres to it completely. This format may be outlined as follows:

1. Statement of the basic issue—the topic for debate—under consideration.
2. Statement of the various positions that have been taken on this issue.
3. Statement of the correct or preferred position (i.e., Āmidī's position).
4. Invalid arguments (in other words, invalid reasoning, *nazar*) for the correct or preferred position.
5. Objections that can validly be leveled against these arguments.
6. Valid arguments for the correct or preferred position.
7. Objections that have been leveled against these arguments.
8. Counterarguments that have been propounded.
9. Refutation of the objections.
10. Refutation of the counterarguments.

In some instances—where Āmidī himself does not take a position on the issue under consideration but rather withholds judgment—this format is not appropriate and gives way to an alternate format:

1. Statement of the basic issue under consideration.
2. Statement of the various positions that have been taken on this issue.
3. Arguments that have been propounded in support of these positions.
4. Objections to these arguments.
5. Counterarguments.

Clearly these formats do not in themselves depict live disputation as such, although they presuppose it. Rather, they represent sets of procedures that

Āmidī follows in recording the *results* of dialectical exchange. One could quite easily, on the basis of Āmidī's record, reconstruct a plausible debate such as might actually have occurred between scholars. However, Āmidī is not interested in merely recording in a secretarial manner such exchanges, real or imagined. Rather, his method is to distill from the process of debate the essential content of arguments used and to present this in the manner just described. In cases where Āmidī's own position has prevailed, it assumes a central place as the correct or preferred position, and debate is accordingly transformed into a defensive monologue. Āmidī casts himself in the role of proponent (*mustadill*) and respondent (*mujib*), addressing the adversary, who is assigned the role of objector (*sā'il*, literally "questioner") and counterproponent (*mu'tarid*). Thus Āmidī employs the standard formulae found everywhere in Muslim scholarly literature: "If you say [i.e., object, raise questions]...I say [by way of response to your objection]..." In cases where Āmidī withholds judgment, he assumes the role of general critic of all arguments propounded.

When the objections and counterarguments discussed by Āmidī are numerous, as they often are, the discussion becomes extremely complex, accounting for the unreadability of the *Ihkām*, mentioned above. This unreadability is due not so much to the difficulty of the content of the discussion as to the fact that the format places an enormously heavy burden upon the reader. Āmidī always states objections and counterarguments in logical order *first*, before presenting his refutations. When the objections and counterarguments are many, the reader who simply follows Āmidī's sequence has lost track of the first objections by the time he or she reaches the refutations. A strict reading in sequence eventually becomes impossible, and the reader must adopt the practice of turning the pages back and forth between objections and counterarguments, on the one hand, and refutations, on the other. Āmidī is not, of course, intentionally making progress difficult for the reader. His procedure is in any case the standard one followed in the literature of Islamic theoretical jurisprudence, and it has a purpose—to retain any logical sequence that may exist from one objection or counterargument to the next. Such a sequence is not always detectable. When it is present, however, then the sum total of objections and counterarguments forms, as it were, a single organic whole, a "superargument," if we may coin such a term.

The distinction between an objection and a counterargument may be stated as follows. An objection is essentially a criticism of the argument (or arguments) advanced by the proponent (i.e., item 6 in the first format outlined above). It holds this argument to be invalid. A counterargument, on the other hand, accepts the proponent's argument as valid in itself but introduces

adilla (rational proofs or textual indicators) supporting a position contrary to that of the opponent, which it holds to be stronger than the *adilla* upon which the proponent's argument rests. An objection exposes some flaw in the proponent's reasoning or use of texts, whereas a counterargument singles out no such flaw, but contends that the *adilla* the proponent uses are inconclusive and less convincing than the contrary *adilla*. Counterargument is based on the notion that valid *adilla* may contradict each other and that in such cases it is sometimes possible to single out a particular *dalil* as stronger and more convincing than the others. This notion, it should be noted, holds only for *adilla* that, though valid as far as they go, are inconclusive and productive only of opinion, that is to say, *adilla zanniya* (called *amārāt* by some theologians, as was noted earlier). The standard formula used in introducing a counterargument is: "Even if we accept your argument, there are other *adilla* that point to the contrary, namely. . . ."

Substantive-Theological Postulates

We earlier noted the truism that there can be no divine law unless there is a divine being. It is this truism that accounts, at least partly, for the substantive-theological postulates of Muslim jurisprudence. Inquiry in the realm of law presupposes theological inquiry.

Looking at the outline of the contents of the *Abkār al-afkār*, we find two important clues to Āmidī's theological thought and method. The first clue consists in the fact that the subject of divine revelation (discussed in the fifth *qā'ida*, which is entitled "Concerning Prophecy") is taken up *after* the discussion of theology proper—that is to say, the discussion of matters pertaining directly to God as opposed to other matters that fall within the purview of theology in the broader sense—has been completed. This signals to us a feature of the theology developed by Āmidī and like-minded thinkers that has far-reaching consequences: this theology considers our knowledge of God to be independent of revelation. The theology of the *Abkār al-afkār* is, in other words, a type of natural theology.

The second clue consists in the fact that theology proper is dealt with under the more general heading of "the known" (*al-mā'lūm*). Within the structure of the *Abkār al-afkār*, theology proper is placed within a subdivision of the fourth *qā'ida*, which is entitled "The fundamental categories subsumed under 'the known': the existent, the nonexistent, and that which is neither existent nor nonexistent." It is significant that this *qā'ida*—by far the longest of the eight *qawā'id* that make up the *Abkār al-afkār*, comprising more than half of its contents—directly follows the discussion of

knowledge and the means of attaining it (*nazar, dalīl*, etc.), which takes up the first three *qawā'id*. Āmidī moves directly from the discussion of knowledge to the discussion of “the known.” Theology proper is taken up *as part* of the latter discussion. Within the fourth *qā'ida* there are three subsections corresponding to the three categories subsumed under “the known.” Within the subsection on “the existent” there are, in turn, two subsections, one on “the existent whose existence is necessary” and the other on “the existent whose existence is possible.” Since God is identified with “the existent whose existence is necessary,” theology proper is co-extensive with the exploration of that category.

These features of the *Abkār al-afkār* tells us that theology proper is, in Āmidī's thinking, rooted in metaphysics, the study of God in the study of being. Metaphysics explores the contents of human knowledge at the most abstract, most general level possible, for there are no concepts that are more general or more fundamental than the concepts of existence (here taken to be synonymous with being, both terms being renderings of the Arabic *wujūd*) and nonexistence. For this reason metaphysics was for Aristotle the first science, the science of first principles. Among Muslim thinkers such as Āmidī, metaphysics per se did not become an independent science, devoted exclusively to metaphysical inquiry, such that it could in itself become a first science. Metaphysics was included along with nonmetaphysical topics within the larger science of theology. Even within the section of the *Abkār al-afkār* in which metaphysics is placed, the fourth *qā'ida*, topics that are not strictly speaking metaphysical—for example, the acts of God—are taken up, and the following *qawā'id* (the fifth through the eighth) are devoted entirely to nonmetaphysical topics. However, metaphysics is surely the first concern of Islamic theology, from which all the rest flows; by virtue of its inclusion within theology it may be said that theology is, for Muslims, the first science. Moreover, metaphysics takes on special urgency for Muslims by virtue of its entailment in theology proper, the study of God.

It is by equating the idea of God with the idea of the existent whose existence is necessary that Āmidī is able to place the idea of God under the heading of “the known.” This is not to say that all human beings actually have a knowledge of God. Such knowledge does not impose itself upon the mind in the manner of necessary knowledge such that it is impossible for the human mind to resist it. The knowledge of God is, rather, something that must be attained in the manner of acquired knowledge—through reasoning. One who has not engaged in the requisite reasoning may easily be devoid of this knowledge. However, inasmuch as the requisite reasoning is entirely discursive and does not entail any dependence upon revelation, the idea of God

may be regarded as latent within human thinking. It is present within each one of us, waiting to be brought to the surface through rational reflection.

As with all discursive reasoning, that which leads us to the knowledge of God's existence must begin with what is known necessarily. The argument that Āmidī propounds for God's existence begins with something known empirically: we observe that things in the world around us come into existence after having been nonexistent. Experience tells us that nothing in our world is without a beginning. Taking this irresistible knowledge as our starting point, we begin to reason our way to God. This reasoning proceeds as follows: (1) Each thing that exists in our world must exist either because it is in its very nature to exist or because something other than it has conferred existence upon it. If it were in its very nature to exist, there could not have been a time when it did not exist, and it could not, therefore, contrary to our experience of things in the world, have *come into* existence. Therefore, each of the things that exist in our world must owe its existence to something else. Its existence is, in other words, intrinsically possible, not necessary, since anything whose existence is necessary cannot have *not* existed. (2) That to which things in our world owe their existence must itself exist necessarily by reason of either of the following two arguments. (a) If we suppose that *A* owes its existence to *B* and that *B* owes its existence to *C*, and so on, we end up with an infinite regress; this is impossible in that a process without a beginning can never extend to the present, making it possible for a thing to exist here and now. Since an infinite regress is impossible, we must affirm that things owe their existence to something that does not itself owe its existence to anything. (b) If we conceive of existents that owe their existence to something else, not as a succession extended through time, but as a totality of things existing simultaneously at a particular point in time, we must affirm that the totality, like the individual existents that make it up, owes its existence to something other than itself. This other thing must clearly be an existent that does not owe its existence to something other than itself, for if it did, it would be *part* of the totality, not something that conferred existence on the totality.²¹

This account of Āmidī's argument for the existence of God—which obviously falls under the general heading of the argument from contingency, the favorite argument of Muslim theologians—greatly condenses Āmidī's own presentation, omitting the step-by-step details that reveal the formal structure of the argument and leaving aside alternate versions of certain parts. Furthermore, I have not attempted to describe the larger dialogue within which Āmidī places his argument. It may be noted that, with respect to the sheer existence of God, there is wide agreement within the human community, according to Āmidī. Not only do all Muslim thinkers affirm the existence of

one whose existence is necessary; so do thinkers of the other religious communities (*ahl al-sharā'ir*), as well as the various groups of metaphysical philosophers (*ilāhīyūn*). Atheism, one gathers, is peripheral to the human community; but, in order to render the account of the dialogue over God's existence complete, its arguments must be taken into account. As one turns to the discussion of God's attributes and acts, one sees the area of agreement beginning to diminish as the theists themselves begin to explore their own differences of opinion as to what may be affirmed of God beyond existence. But with respect to his existence as such they form a united front. They may disagree as to what arguments for God's existence are most convincing, but they agree on the conclusion to which the arguments are intended to lead. Implicit in this agreement is the recognition that God's existence is not axiomatic; it must be demonstrated through a process of reasoning.

Once God's existence has been established, the reasoning intellect is able to move on to further questions relating to God. First among these is the question of God's attributes. Āmidī belonged to the company of those Muslim theologians—described by him as orthodox (*ahl al-haqq*)—who believed that sound reasoning, unaided by revelation, would lead any rational person to the conclusion that God is possessed of seven “intrinsic” or “essential” attributes (*al-sifāt al-nafsīya*, *al-sifāt al-dhātīya*) and that these attributes are real—that is to say, positive—eternal and distinct from the divine essence while subsisting through it. To use the traditional language: God is knowing by virtue of a knowledge, willing by virtue of a will, able by virtue of an ability, living by virtue of a life, hearing by virtue of a hearing, seeing by virtue of a sight, and speaking by virtue of a speech, the terms “knowledge,” “will,” “ability,” “life,” “hearing,” “sight,” and “speech” all being representative of real and eternal attributes that are distinct from the divine essence while subsisting through it. As upholders of this view, the orthodox theologians are frequently called “affirmers of the attributes” (*ahl al-ithbāt*) in contrast to the “negators of the attributes” (*ahl al-ta'til*), those who rejected the orthodox position. Among the latter Āmidī includes the Muslim Neoplatonic philosophers, the Shī'īs and the Mu'tazilis.

Of the arguments advanced by the “negators of the attributes,” the one to which Āmidī devotes the most attention runs essentially as follows. If one posits real attributes for the one who exists necessarily and regards these attributes as essential, then one in effect makes the divine essence something that subsists through simpler elements (*mabādi'*) whose existence is independent of the divine essence such that the divine essence does not exist necessarily through itself. One then has, in place of a single necessarily existent divine essence, a plurality of necessarily existing prior elements. But a plurality of

necessarily existing things is an impossibility, for, if these things truly exist necessarily in and of themselves and not by virtue of some other factor, there can be nothing that distinguishes them from each other, no principle of differentiation.

Āmidī's reply to this argument is that to affirm that the one who exists necessarily has a plurality of essential attributes is not to affirm that these attributes have a prior independent existence and that his existence is dependent on them such that he is robbed of his self-subsistence. In fact, the attributes subsist through his essence, and though they do themselves exist necessarily they do not do so in and of themselves, as does the divine essence, but only through that essence. The concept of an existent that exists necessarily in and of itself does not rule out the possibility of a plurality of essential attributes so long as that existent is not made to depend on those attributes for its existence, for the expression "existent that exists necessarily" refers to nothing other than "that which has no cause outside its essence and does not depend [for its existence] on anything other than its essence, whether this be an attribute or not." Furthermore, a plurality of existents that exist necessarily is not an impossibility, since there can be something that distinguishes these existents from each other—namely their *particular* existences. Āmidī here affirms the principle that existence is not a genus that is common to a plurality of individuals; rather, it is coterminous with the individual existent. What a plurality of existents which exist necessarily really have in common, therefore, is a mere label: necessary existence. And this label designates, not a positive attribute, but a negative one—nondependence on something else.²²

Just as the arguments of the "negators of the attributes" are concerned with demonstrating the impossibility of a plurality of positive divine attributes, so Āmidī's response is concerned to demonstrate its possibility. But to demonstrate something's possibility is not to demonstrate its actuality. Āmidī must now show, if he is to keep to the orthodox line, that a rational case can be made for the actual existence of positive divine attributes and for the identification of these with the seven attributes affirmed by the orthodox.

At this point we find Āmidī in dialogue, not with non-Muslims or with heterodox Muslims, but with his own fellow-schoolmen, the Ash'arīs. Such disagreement within a school, whether theological or jurisprudential, is not uncommon, though in matters of theology it tends to relate more often to methods of argument than to substantive tenets. Here the disagreement has to do with a very fundamental methodological issue. His fellow-schoolmen, he tells us, had generally argued for the divine attributes in two stages, in both of which they would employ the famous principle of "considering the absent as analogous to the present" (*qiyās al-ghā'ib 'alā al-shāhid*), "the absent" being

the numinous world beyond the reach of human sensory experience and “the present” being the phenomenal, empirically available world. In the first stage they sought to demonstrate that certain *attributive judgments* (*ahkām al-sifāt*) must be made with reference to God. The world, they argued, displays the highest degree of wise organization and perfection. Yet we know that the world, in and of itself, has only a possible existence; there is nothing about it that requires that it exist. It could either exist or not exist. Since the world exists, we must conclude that some agent other than it has chosen for it existence over nonexistence. Since we observe that in the phenomenal world only existents that can be described as willing make choices among possibilities, we conclude by way of analogy that the numinous agent who chose existence for the world is willing. Similarly, we discover that in the phenomenal world only those who are able and knowing make things and conclude, again by way of analogy, that the numinous maker of the world—the one through whom it exists—is able and knowing. We then go on to note that in the phenomenal world anyone who is willing, able, and knowing must be living and, extending this observation into the realm of the numinous, conclude that the divine Creator must be living. From there we proceed to argue that, just as in the phenomenal world living things that are willing, able, and knowing are also hearing, seeing, and speaking, so, too, the Creator must be hearing, seeing, and speaking. Furthermore, anyone to whom hearing, seeing, and speaking are not attributed will undoubtedly have their opposites—deafness, blindness, and dumbness—attributed to him; since these are imperfections, they cannot be attributed to the Creator, who is above all imperfection. This stage of the argument leads to the next. Having come to the realization that one must, on the analogy of the phenomenal world, affirm that God is willing, able, knowing, living, hearing, seeing, and speaking, one then observes that in the phenomenal world such affirmations have as their ground the existence of positive attributes—will, ability, knowledge, life, hearing, sight, and speech—and one carries this realization, too, into the realm of the numinous. Thus God becomes—in accordance with orthodox expectations—willing by virtue of a will, able by virtue of an ability, knowing by virtue of a knowledge, and so on.²³

Having completed his account of the foregoing argument, Āmidī begins his critique of it with strong language. “Know,” he says, “that this way of arguing is extremely weak. What it does, essentially, is to carry on an *inductive* investigation within the phenomenal realm and then to predicate of the realm beyond [the *ghā’ib*] what it [on the basis of the results of the inductive investigation] predicates of the phenomenal realm. And this is a fallacious procedure.”²⁴

To begin with, an inductive investigation produces sure results only if it has examined all the relevant cases, in which instance it may be considered complete. But how can we be sure that the inductive investigation used in the argument under consideration is truly complete? And even if it be assumed to be complete, can we properly apply generalizations of which we are certain with respect to the phenomenal world to the numinous? Would this not be like applying generalizations regarding humans of which we are certain (for example, “humans laugh”) to horses? Are not the phenomenal world and the numinous, like humans and horses, entirely different as to their essential natures? But let us suppose that the two realms are entirely alike (which is absurd). Would this not render inductive investigation within the numinous simply an extension of inductive investigation within the phenomenal realm such that a genuine resort to analogy would be meaningless? Would the numinous then not belong to the realm of the phenomenal, destroying the distinction between them? Furthermore, even those who resort to the treatment of the numinous as analogous to the phenomenal would acknowledge that there is in the phenomenal world no agent, no creator, in the true sense of the word and that whatever exists in the phenomenal world is deemed agent only by virtue of its acquisition of that status through a creative act of God. Therefore, what exists in the phenomenal world and what exists in the world beyond are two different things. So how can there be analogies between them?

Since the first stage of the argument under consideration breaks down by virtue of the fallaciousness of such analogies, the second stage of the argument, which also hinges on like analogies, collapses with the first. Āmidī deems it unnecessary to comment at length on the second stage. One other matter, however, merits comment. Āmidī finds the argument that not to predicate certain attributes of God—for example, sight, hearing, and speech—is to predicate their contraries, and therefore defects, of God to be faulty. It is wrong to suppose, he says, that not to predicate sight of God is to render him *deprived* of something. In refusing the predicate sight of a rock, one is not attributing privation of that faculty to the rock. There is, for Āmidī, a lack of logical tidiness in this approach to the divine attributes.²⁵

Rather than arguing for the divine attributes in a general and indirect way by first attempting, in the manner just described, to demonstrate the necessity of attributive judgments concerning God and then proceeding to argue that such judgments presuppose real attributes, Āmidī prefers a more direct approach, which proceeds attribute by attribute, taking each on its own merit and making a case specific to each.²⁶ This is not to say that what holds true of one attribute will not hold true, at least to some extent, for others. Indeed, a key argument that Āmidī develops in connection with the attribute he first

discusses, the divine will, also emerges in connection with the other attributes, as we shall see. It seems, in fact, to be an assumption in Āmidī's method that, once one has examined in depth the case for any one of the attributes, one has blazed the trail for the study of the others.

In presenting Āmidī's thinking about the divine attributes, I shall treat at some length his central argument for the divine will—the attribute he himself dwells on longest in the *Ghāya*—and then touch briefly on his views concerning the other attributes. Āmidī propounds, in support of the divine will, an argument that he regards as so decisive that he describes it as “severing the roots” of those who negate the attributes.²⁷ If we follow this argument closely, we shall find it to be an especially good example of the sort of reasoning which Āmidī considers to be fundamental to the whole theological enterprise. The argument centers on the following syllogism, the middle term of which is italicized.

MINOR PREMISE: If God is not a possessor of a will, then he is a *nonpossessor of a will*.

MAJOR PREMISE: Everything that is a *nonpossessor of a will* is deficient in relation to the one who possesses a will.

CONCLUSION: If God is not a possessor of a will, then it follows that he is deficient in relation to one who possesses a will.

The minor premise in this argument, which takes the form of a hypothetical proposition, entails a logical operation that is discussed in Muslim manuals of logic:²⁸ the transformation of a negative proposition into an affirmative one by transferring the negative particle from the copulative part of the proposition to the predicate. This is possible, according to the Muslim logicians, whenever the subject is a real existent. Thus the proposition “God is *not* a possessor of a will” may be transformed into “God is a *nonpossessor of a will*.” This latter form of the proposition, combined with the major premise, provides the middle term leading to the conclusion.²⁹

It should be noted that with the minor premise Āmidī is already tackling the subject of attributes as such head-on and circumventing the whole discussion of “attributive judgments,” with which the first stage of the traditional Ashʿarī argument, as described by him earlier, was preoccupied. The traditional argument preferred to begin with propositions of the form “God is willing” (*murīd*). In so doing it was beginning, to an extent, on the adversary's turf, for many of those who denied the reality of the attributes accepted the so-called attributive judgments as affirmable, in some sense, of God. Just what that sense was was of course a matter of some dispute, but that attributive-type statements constitute for Muslims a legitimate, even necessary, language about God was widely accepted, even among those who quarreled with the

notion of positive divine attributes. The traditional argument attempted—unsuccessfully, according to Āmidī—to demonstrate that such attributive judgments are possible only to the extent that they are grounded in an acceptance of real attributes.

Āmidī is not interested in exploring ground common to him and his adversary and then moving on from there. He attacks from the start the central position of the adversary: that God *does not have* a will. The key expression in Arabic is *dhū irāda* “possessor of a will”, which stands in contrast to the blander *murīd*. It was the position of some Muʿtazilis that God is willing, not by virtue of a will (considered as something distinct from his essence), but by virtue of his essence. This formulation, which was also applied to the other attributive judgments relating to God, made possible the treatment of terms such as “willing” (*murīd*) as mere appellations or metaphors having no *proper* attributive function. As the corresponding *nouns* (will, knowledge, etc.) came to be regarded as proper designations of positive attributes, they became the crux of the debate between affirmers and negators of the divine attributes. In denying that God is willing by virtue of a will, one was denying that will, considered as a positive attribute, had anything to do with God’s willing. Āmidī plunges directly into midstream by taking by the horns the contention that God does not *have*, is not a *possessor of*, a will. His first step is to transform this contention, which has the form of a negative statement (*A is not B*), into an affirmative statement through a generally accepted logical operation, so that he will be able to develop a syllogism that will “sever the roots” of the adversary.

The conversion of a negative proposition into an affirmative one makes it possible for Āmidī, in the major premise, to say something now about non-possessors of a will; for “nonpossessor” has become a category, a possible term of a categorical proposition. What Āmidī says about nonpossessors of a will is of crucial importance to his argument: they are deficient in comparison with possessors of a will; or, to put the matter differently, possessors of a will are perfect in comparison with nonpossessors. We know this from our experience of the phenomenal world. In that world one who is in possession of a will is at liberty to choose something or refrain from choosing it. Now, the sound mind knows that this constitutes a perfection, whether in the phenomenal world or in the world beyond, and that one who does not enjoy such liberty is deficient in relation to the one who does. The mind comes to this knowledge as a result of a process of reasoning, which Āmidī details in his opening account of the argument for the divine will, although in a later passage he indicates that this knowledge occurs innately, by way of intuition (*badiha*), making it an instance of necessary knowledge.

Given this major premise, the negators of the divine will have been caught in a trap. Āmidī is confident that he has shown that their position leads logically to an impossible conclusion, that God is deficient in comparison to his creatures inasmuch as the creatures possess a will and he does not. The syllogism has thus accomplished for Āmidī a *reductio ad absurdum*. It is not *conceivable* (*mutasawwar*) that the creature should enjoy a perfection that the Creator lacks: this is contrary to what we know innately, that the Creator is perfect in all respects. What Āmidī seems to be affirming is that the very *idea* of a Creator requires us to ascribe perfection to him and that the notion of a Creator who lacks a perfection that the creature enjoys is self-contradictory.

As with Anselm's ontological argument for the existence of God, we seem to have as the fulcrum of Āmidī's argument an identification of God with the idea of "the perfect being," although unlike Anselm Āmidī does not develop the notion that existence itself is entailed in divine perfection such that one can use the idea of "that than which nothing greater can exist" as a proof of God's existence. Āmidī, like Muslim theologians in general, prefers to argue for God's existence on the basis of an empirical premise (namely, our experience of the contingency of things in the phenomenal world), rather than through strictly *a priori* means. However, once one has established God's existence through an argument that makes him the existent that exists necessarily—and thus, insofar as this existent must be the conferrer of existence upon all other existents, Creator—one could, in seeking to establish the attributes of this Creator find great usefulness in the notion that the Creator cannot, by virtue of his creatorhood, lack any perfection that the creature enjoys.

In developing this argument, Āmidī has not resorted to the method of treating the numinous as analogous to the phenomenal realm; that is to say, he has not established through inductive investigation a generalization relating to the phenomenal realm and then extended the generalization to the realm of the beyond on the assumption of the latter's being analogous to the phenomenal realm. Since Āmidī has shown this approach to be fallacious, he is bound to avoid it in setting up arguments of his own. His approach to the subject of the divine will is therefore entirely analytical and deductive. The assertion that God does not possess a will is first of all shown to be reducible to the assertion that God belongs to the class of nonpossessors of a will. It is then shown that the *concept* of nonpossessor of a will, when subjected to analysis, is seen to entail the notion of deficiency in relation to the possessor of a will and that the *concept* of possessor of a will entails, correspondingly, the notion of perfection.

There has not been up to this point any resort to inductive investigation within the phenomenal world. Āmidī does, it is true, seem to maintain that it is with reference to the phenomenal realm that we discover what it means to possess a will: it means that one is at liberty to choose something or to refrain from choosing it. But this discovery does not, it appears, involve induction: one case is sufficient to show what it means to have a will. Again, it is the analysis of a concept that seems to be at issue. Once we understand that to have a will is to be at liberty to choose a thing or not to choose it, we come to the immediate realization that possession of a will is a perfection and that nonpossession of a will is a deficiency. Since this realization arises solely from conceptual analysis and not from inductive investigations conducted within the phenomenal realm, it must be immediately valid with reference *both* to the phenomenal realm and to the realm of the beyond. This being the case, the conceptual analysis may be carried further: the concept of Creator entails superiority over the creature such that the Creator cannot be devoid of a perfection (possession of a will) that the creature enjoys.

Among the arguments against his position that Āmidī deals with in the subsequent discussion is one that compels him to come to terms with a crucial issue. The will of the Creator cannot, according to this argument, be of the same genus as the will of the creature; consequently, the divine will is beyond conception. And what is beyond conception cannot be regarded as a perfection. Āmidī, in response, admits that the divine will is not of the same genus as the creaturely will. He does not, apparently, mean that the divine will does not entail the liberty to choose a thing or not to choose it such that “will,” when applied to God, becomes a mere label having no meaning whatsoever. Rather, he seems to mean that the nature of that attribute involved in God’s choosing or not choosing something is different from the nature of the attribute involved in our choosing or not choosing something. For one thing, in our case will is related to desire: we choose what serves some purpose that we *wish* to achieve. Our willing is bound up with our wanting. But God has no preferences relating to wishes or wants that he seeks to bring to realization. Therefore, his willing eludes us.

To say that God’s will is not of the same genus as the creaturely will is not, however, to say that it cannot be regarded as a divine perfection. For there can be two different orders of perfection. Just as the creaturely will, whose nature we are able to grasp, constitutes a perfection *at the creaturely or phenomenal level*, so it is quite possible for the divine will, despite its belonging to an entirely different genus such that our minds cannot comprehend it, to constitute a perfection at the level of the numinous. Thus if God does not possess will, he is deficient at the numinous level, while the creature, being in

possession of will, is perfect at the phenomenal level, producing a situation that contradicts the very notion of divine Creator. Āmidī considers that his arguing through conceptual analysis is still valid.³⁰

Having established the divine attribute of will, Āmidī has—to repeat the expression used earlier—blazed a trail for the vindication of the other six attributes. For even though he discusses and contests a wide spectrum of opinions relating to those other attributes, when it comes to offering an argument of his own he simply refers to his discussion of the divine will and asks the reader to apply the argument stated in that discussion to the attribute presently under consideration. Thus, in the case of the divine knowledge, for example, we are to argue that the assertion “God is not a possessor of knowledge” is reducible to the assertion that God belongs to the class of nonpossessors of knowledge, that nonpossessors of knowledge are deficient in comparison to possessors of knowledge, and that it therefore follows from the assertion “God is not a possessor of knowledge” that he is deficient in comparison to his creatures. This syllogistic *reductio ad absurdum* works equally well, according to Āmidī, for God’s ability, speech, sight, hearing, and life. With all of these attributes, we have the admission on Āmidī’s part that, as with the divine will, they are not of the same genus as the corresponding attributes of the creature and can therefore be conceptualized only with reference to their functioning. We also have, with these attributes, the same reliance on conceptual analysis with the idea of perfection occupying a central position. With one exception, we shall not here explore further Āmidī’s discussions of these attributes since the essentials of his case for the divine attributes have already been considered, and this is not the place to go beyond the essentials. The exception is the attribute of speech, which has special importance for our present study, as will shortly become evident.

After the existence and attributes of God, the next major item on Āmidī’s agenda is the acts of God (*af‘āl allāh*). Among the tenets for which he argues under this rubric, two are especially prominent and were especially dear to the hearts of the orthodox: the belief that creation is an exclusively divine act and the belief that God’s acts are not dictated by any purposes or ends. In maintaining the former, the orthodox theologians were required to refute a view widely held among the Mu‘tazilīs—that God’s creative activity did not extend to the sphere of spontaneous human activity, that human beings were themselves the creators of their own acts. In this view, God’s creative activity did not constitute the ground of *all* existence, since human acts took place entirely by virtue of human initiative. This confinement of divine creation to a sphere exclusive of spontaneous human acts seemed, from a Mu‘tazilī point

of view, the only way to safeguard human responsibility. How could humans be responsible for acts of which they were not the creators?

From the orthodox point of view, however, this assignment of a creative power to humans constituted an unthinkable restraint on divine power, one that virtually destroyed the divine omnipotence. On the other hand, even the orthodox could not sacrifice the principle of human responsibility: there were too many revealed dicta that affirmed it. For this reason the Ash'arī school, to which Āmidī belonged, developed the famous doctrine of “acquisition” (*kasb*). Human acts could, according to this doctrine, be attributed to humans by virtue of an ability to act that God created in them. It was this ability to act that made deliberate human acts truly the acts of *humans*, acts for which they could be held accountable, and it was the same ability that spelled the difference between deliberate acts and involuntary acts, which did not entail responsibility. To use the favorite Ash'arī term, it was by virtue of this ability that humans “acquired” their acts such that the acts could be regarded as truly “theirs” and not God’s.³¹

The Ash'arī view strove for consistency in the application of the principle of the contingency of all things save God. God alone, as the existent who existed necessarily, could *confer* existence, and creation could only be properly understood as a conferring of existence. Even human acts could not escape the thoroughgoing application of this principle. Their sheer occurring—their coming into existence—could not be a human feat if God is the exclusive source of all existence. The fact that acts are ephemeral, that they vanish immediately, unlike objects that remain in existence over a span of time, does not militate against their partaking fully of existence. As we shall see shortly, no contingent thing in any case remains in existence of its own accord. In and of itself, contingent existence has no staying power; left to itself, it vanishes immediately. Things exist through time only insofar as existence is continuously conferred upon them.

Thus human acts have their ontological ground in God—it could not, for the orthodox, be otherwise. Within the realm of divinely created existence, acts occur as the acts of real human agents and are reckoned to be the acts of these human agents by virtue of an ability to act that is created in them. Human agency is but part of the drama of the divinely created order of things; it is a *created* agency.³² Within the created order, acts issue truly, not metaphorically, from human agents to the extent that they lie within the sphere of their ability. This constitutes a sufficient ground for human responsibility. Humans are not responsible for what occurs outside the sphere of their ability. They are not responsible for rainfall or drought, or for fainting or dreaming; they *are* responsible for murdering, stealing, and lying.

Ash'arī theology even deemed it nonessential to human responsibility for humans to have, in addition to the ability to perform a particular act, the ability to perform its contrary. It is not essential to a person's being responsible for an act of murder that he have had the ability to spare the life of the victim. Accordingly, the Ash'arīs refused to regard the ability to act as existing prior to the act itself; it was, in their view, created with the creation of the act itself. There was, for them, an obvious empirical basis for this view: until an act actually occurs, the agent has no way of knowing whether he has the ability to perform that act. I can speculate that I have the ability to rise from my chair and close the door of my office, but I have no way of being certain that I have that ability until I actually rise and close the door. Predictions based on past performances are no ground for certainty. Since the ability to act is created in the same moment as the act itself, it is created as the ability for a particular act.

The Mu'tazilis, in placing the ability to act before the act, had posited multiple human abilities, that is to say, abilities to perform, not only an act and its direct opposite but also a range of acts, abilities that amounted to potentialities inherent in humans. For the Ash'arīs, this had no basis in real human experience. If I murder someone, I may be held responsible for my act and justly punished for it without my having had the power to pursue some alternate course. Because the act proceeded from an ability created in me, I am the murderer, the one to be indicted. Human ability—and with it human agency—stands on an altogether different plane from divine ability and agency. Both planes are involved in my act of murdering. God creates the act as an act performed by me by creating the act in me (as its substrate) along with the ability to perform the act. The proper object of God's uncreated ability is the sheer existence of the act; the proper object of my created ability is the act considered as a given among the givens of the created order. God is agent *qua* Creator, conferrer of existence; I am agent *qua* murderer.

The refusal to infringe in any way upon God's creatorship reflects a pious desire to "let God be God" that is also evident in the Ash'arī doctrine that God's acts are not dictated by purposes or ends. All of God's acts are, in the final analysis, acts of creation. There is no act of God that does not consist of bringing a thing into existence, whether the thing brought into existence entails human agency or not, whether it follows the familiar course of events or not (as with a miracle). With each such act, God exercises perfect sovereignty; that is to say, he simply does what he does, and there is no way of accounting for what he does in terms of ends, discernible to the human intellect, that *govern* his acts. This is not to say that the Creator may not act to fulfill some end; it is to say, rather, that he is not bound by some necessity,

discernible to the intellect, to fulfill an end. God as sovereign *may or may not* choose to fulfill an end, and in view of this dependence of all ends upon his will, no end can truly account for, or rationalize, God's acts. Only if the ends govern or determine the divine acts will they have truly explanatory value.

The Mu'tazilis are again the principal adversary in this discussion of whether divine acts are governed by ends. Ends, they maintained, entail some sort of benefit. Since it is inconceivable for God himself to be in need of benefit, no benefit relating to him may, they acknowledge, be made the end of any of his acts. Quite the contrary is true, however, of benefit relating to the creature. Such benefit is fully conceivable and as such must necessarily constitute the end of divine acts, for God's acts cannot be without an end. That this is so may be demonstrated through a *reductio ad absurdum*: if God does not take such an end into account, then his act constitutes frivolity.³³ It should be noted that, according to Āmidī's account of the Mu'tazili viewpoint, God is in no sense under obligation to take ends into account. Obligation presupposes subordination to a higher being capable of applying sanctions against noncompliance, which is unthinkable in God's case. The Arabic term that lies at the heart of the discussion of ends, *wujūb*, is ambiguous: it may mean either "obligation" or "rational necessity." When the term is applied to ends of divine acts, it is the latter sense that is operative in Mu'tazili thinking. That the Creator should act in a frivolous manner—that is to say, without taking ends into account—is rationally untenable because it violates the intellect's sense of what is proper. Therefore it follows, by way of rational necessity, that God takes ends into account. Since these ends cannot entail benefit to him, they must entail benefit to the creature. This reasoning forms the basis of the famous Mu'tazili doctrine that God necessarily does what is most beneficial to the creature.

Āmidī's response to this Mu'tazili argument is to take to task the notion that an act that is not directed to an end constitutes frivolity.³⁴ This is so only in the case of acts that are susceptible to governance by ends; but Āmidī's contention is precisely that God's acts are not susceptible to such governance. He then carries his counterargument a step further: even if we allow that acts that are not directed to ends constitute frivolity, the Mu'tazili reason for rejecting the possibility of divine frivolity is fallacious. They say that the notion that God acts in a frivolous manner is contrary to the intellect's sense of what is proper. The term that I have translated as "proper" is *hasan*, which together with the term *qabīh* constitutes the "good" and "evil" (or "bad") of Islamic ethical discussions. The Mu'tazili position is that the intellect judges attribution of frivolity to God as bad and attribution of purposeful activity to him as good or proper. The position depends on the premise that certain

things are intrinsically good, or proper, and other things intrinsically bad, or improper, and that the unaided human intellect is capable on its own of discerning, among things, the good and the bad. The rejection of this premise eventually became a hallmark of theological orthodoxy in Islam. Things were regarded as good or bad solely by virtue of their being judged such by God. Since nothing was intrinsically good or bad, any given thing could become either good or bad according to whether God judged it to be one or the other. Āmidī's own argument for this way of thinking—often referred to as divine voluntarism or subjectivism—will be considered later.³⁵

Having considered Ash'arī thinking about the acts of God, we are in a better position to understand Āmidī's discussion of the attribute of divine speech. In advancing the Ash'arī view that the divine speech is to be counted among the essential—and therefore eternal—attributes of God, Āmidī is compelled to counter an opposing Mu'tazilī position according to which the divine speech lies entirely within the realm of divine acts. Āmidī's case for the essentiality/eternality of the divine speech rests ultimately on the perfection principle explored earlier. Possession of speech is, like possession of the other attributes, a perfection that cannot under any circumstances be denied of the Creator. However, the Mu'tazilī position has arguments in its support that Āmidī, for the sake of thoroughness of his discussion, is compelled to deal with. The Mu'tazilī view of divine speech took shape during the controversies that raged in the early ninth century over the nature of the Qur'an. There was no doubt in the minds of any of the participants in this controversy that the Qur'an was divine speech: that was a cardinal and unchallengeable Muslim belief. The question was: is this divine speech to be identified wholly with the created phenomenon that consists of the words that the Angel, the Prophet, and other human beings recite with their tongues and store within their memories, or is it to be raised above the mundane realm and placed within the realm of God's very being, as the orthodox maintained?

In keeping with their insistence upon the mundane and created nature of the divine speech, the Mu'tazilīs held that the statement "God speaks," which they were obliged as Muslims to accept as true, did not mean that he possesses speech as an eternal attribute; rather, it meant that God is the agent behind the speech that the Prophet heard upon the lips of the Angel in the sense that he is the creator of that speech. (All of God's acts, we have noted, are acts of creation.) God's "speaking" thus lies entirely within the sphere of his acting.³⁶ In this respect it is, for the Mu'tazilīs, like human speaking. For humans, as for God, to speak is to create speech. God's creating of speech is different from the human creating of speech, since God does not employ vocal chords of his own but rather creates speech within the consciousness

of the Angel, who then imparts it to the Prophet. The agency of the Angel is that of transmitter, not of speaker. Speech, once created, may be transmitted through time by being continuously reproduced by beings other than the original creator. The role of the transmitter is to create an exact facsimile of the original speech. But this does not make the transmitter a creator of the speech as such. He is therefore not the speaker. Only the Creator may be regarded as the speaker.

That the Ash'arīs had a different view of the human agency entailed in human speech (they regarded it as a created agency, leaving God as the Creator even of human speech) is not in itself relevant in the present context. What is relevant is that the Ash'arīs insisted on removing the divine speech from the sphere of divine activity and placing it within the sphere of God's transcendent attributes. They could not of course, deny that the words that created beings recite and store in their memories constituted a created phenomenon; but they argued that one need not identify the divine attribute of speech with this created phenomenon. There were, they maintained, two distinct but interrelated kinds of speech: phonic speech (*al-kalām al-lisānī*) and "psychic," or internal, speech (*al-kalām al-naḥsī*).³⁷ The former consisted of vocal sounds heard upon the lips of speakers (and secondarily of the written symbols used in place of those sounds), whereas the latter consisted of the meanings the sounds expressed. Language was in fact (as we shall later see³⁸) the product of a union between phonic and psychic speech, between vocal sound and thought. As a physical reality, phonic speech was always created; internal speech, however, might or might not be created, depending on the identity of the speaker.

If the speaker was God, then the internal speech belonged to the realm of eternity and was therefore *sui generis* as compared to creaturely internal speech, which constituted a different genus. The phonic speech that entered into the awareness of the Angel and was transmitted by him to the Prophet was a created embodiment or manifestation (*zuhūr*) of the eternal divine speech. This raising of the divine speech, even though qualified as internal, above the level of created things was something that the majority of Mu'tazilīs were unwilling to accept.

Āmidī refutes the view that "God is speaking" means nothing more than "God is the agent behind created speech" with a number of arguments that may be recapitulated briefly. (1). To be a speaker entails more than simply being an agent of speech, since we do not hesitate to call persons who speak involuntarily (as in sleep) speakers even though genuine agency is not involved. (2). If God's being the agent of speech entitles us to describe him as the one who speaks, then his being the agent of sound-production

(the category to which speech as a system of sounds belongs) entitles us to describe him as one who is vocal, and God's being the agent behind movement entitles us to describe him as moving, both of which descriptions are theologically untenable. (3). When we ascribe created speech or any other created phenomenon to someone, we do so primarily by virtue of the person's being the substrate (*mahall*) of the phenomenon, not by virtue of his being the agent in the sense of creator. (4). If "one who speaks" is understood to be a reference to the agent of speech, then "one who wills," "one who is able," and "one who is knowing" must be understood to be references to agents of will, ability, and knowledge: but this is contrary to what is agreed upon. (5). The Mu'tazilis themselves admit that speech is a marriage of vocal sound and meaning and that vocal sound in and of itself can be called speech only by special license. What they admit with respect to speech in general must be admitted with respect to the divine speech. On the one hand, we have an ordered sequence of vocal sounds that God creates and on the other a realm of meaning those sounds convey. This realm of meaning must be internal (*naḥṣī*) to the divine being. Since it cannot be identified with the divine knowledge, will, or ability, it must be considered an attribute distinct from these, namely, internal speech (*kalām al-naḥṣ*). (6). The Mu'tazili way of thinking does not provide genuine proof for the claim that God speaks, which is a cardinal tenet of Islam. They say it can be proven on the basis of prophetic declaration: prophets declare that God speaks and whatever they declare is attested as true by confirmatory miracles. The problem with this method of proof is that it is inconsistent with the Mu'tazili claim that if God did not send prophets to mankind there would still be a rational obligation to know that he exists and is knowing, able, willing, and speaking. One cannot not be under a rational obligation to know in the absence of prophets what can be known only through prophets.³⁹

But how does one distinguish the attribute of internal speech from the attribute of knowledge? If internal speech consists of meanings that correspond to spoken words, do these meanings not constitute the same sort of mental contents as are subsumed under the heading of knowledge? Āmidī is compelled to provide an answer to this important question if he is to safeguard the distinctiveness of the attribute of divine speech. The meanings that are constitutive of internal speech, he says, are something that every speaker finds within himself when he engages in introspection. For example, when one says to one's servant, "Bring me food" or "Bring me water," one is aware of a mental complement of the physical words one utters. Thus while the meanings exist in and of themselves, they are related to the words we utter; they are meanings that we are predisposed to express through words.

Knowledge, which is the faculty that distinguishes things from each other, is essentially different. Furthermore, it is considered good usage in classical Arabic to speak of internal speech. Āmidī quotes the Qur'ānic phrase "they say within themselves" as well as a line of poetry: "Speech lies within my heart; the tongue has been made but a sign of what is in the heart."⁴⁰

Yet another important question demands an answer from Āmidī. Since speech embraces different forms, such as the imperative, the statement, the interrogative, and so on, does the elevation of divine speech to the realm of the eternal not result in a plurality of eternal entities, thus undermining the divine unity? Āmidī suggests that there are two possible replies to this question. One can take the view of certain Ash'arī theologians and affirm that the divine speech is a single entity that may be described as embracing different forms of speech only at such times as creatures exist to whom the speech is being addressed, not perpetually. Or one can follow the lead of Ash'arī himself and hold that the divine speech may be perpetually described as embracing the different forms while yet remaining one itself. In either case any plurality that may pertain to the divine speech is entirely relative to the conditions under which it becomes manifest within the created order. We may not be able to conceptualize the divine speech in its perfect unity apart from the mundane context within which it appears, but this does not mean that the unity may not be affirmed.⁴¹

From Āmidī's discussion of the divine speech a point of great significance for our present study emerges. The idea of divine speech lies at the very heart of the Islamic, or at least the Ash'arī, conception of revelation. The proper object of revelation—the thing revealed—is the eternal speech of God. This speech is first revealed to the Angel Gabriel beside the lotus tree located just above the seventh heaven. In that crucial and mysterious moment a comprehension (*fahm*) of the divine speech is bestowed upon, created in, the Angel. It is through this comprehension that the eternal speech first enters the created order. The Angel then descends to earth and makes known (*tafḥīm*) to the Prophet what he has comprehended. This downward transfer constitutes *tanzīl*, the sending down of the divine speech. As Āmidī explains, it is not as though the eternal speech itself is transferred from place to place: that is manifestly impossible. It is rather that a comprehension of the eternal speech that originally occurs in the highest realm accessible to angels is made to recur on earth through Gabriel's descent.⁴² *Tanzīl* is in reality a shifting of the site of revelation from heaven to earth. Revelation per se is the awakening or creation of a comprehension of the divine speech in the Angel and subsequently in the Prophet. As an event in the experience of the Prophet, it is called *wahy* in Arabic.

As we shall see later,⁴³ part of the divine speech is revealed to the Prophet in the form of a body of words that he is to recite verbatim to his contemporaries, while the other part is revealed as a something that he is to “tell about” (*akhbara*) in his own words or through his acts and endorsements. It is the former that constitutes the Qur'an; the latter constitutes the Sunna. Although discussions of the divine attribute of speech in Islamic theological works have a strong preoccupation with the Qur'an, Āmidī makes it clear that the Qur'an is not the sole representation of the divine speech. The Qur'an is the internal speech (*al-kalām al-naḥsī*) of God embodied in a phonic speech (*al-kalām al-lisānī*) which is of God's own making. The Angel's and the Prophet's comprehension of the divine speech in this case includes a comprehension of particular words that are to be recited just as they are heard. In the case of the Sunna, the internal speech of God comes to be embodied in a phonic speech or in acts and endorsements that are of the Prophet's making (although God remains, as ever, the creative ground of the Prophet's agency). Here the imperative to recite particular words is absent from the experience of comprehending the divine speech.

To say that human beings are capable of knowing, as a result of a process of reasoning and quite apart from revelation, that God is a speaker would seem tantamount to saying that human beings are capable of knowing, through the same process, that God is in some sense a revealer; for a speaker is by nature a revealer. This awareness that God is a revealer exists apart from the awareness that words emanating from a particular prophet constitute divine revelation. The latter awareness arises after reflection upon miraculous signs attesting the prophet's prophethood. However, even before the miraculous signs have appeared, the reflective person knows that it is in God's nature to reveal, to speak, that there is a realm of meaning rooted in his very being that awaits expression through the medium of created words, of phonic speech. Reflection prior to the occurrence of miraculous signs thus predisposes human beings to anticipate an encounter with actual revelation.

The discussion of God's existence, attributes, and acts is placed, as we have noted, under the heading of “the existent whose existence is necessary.” Having completed this discussion, Āmidī then moves on to the other two topics included in his metaphysics: the existent whose existence is possible and the nonexistent. Of these, the former receives the lion's share of attention: it constitutes nothing less than the entire created order, and in the course of his discussion Āmidī sets forth the fundamentals of the Ash'arī cosmology. In contrast to the existent whose existence is necessary, who constitutes a perfect unity, the existent whose existence is possible—or, to use the alternative expression, the contingent existent—is comprised of a plurality of individual

existents. These fall into two general categories, which are called in Arabic *a'rād* and *jawāhir*.⁴⁴ While no English terms can do full justice to these Arabic terms, it is probably best to translate *a'rād* as "accidents" and *jawāhir* as "substrates." Under "accidents" are included all contingent existents that "exist in something other"; under "substrates" are included all contingent existents that constitute receptacles for accidents, the "something other" in which accidents exist.

Accidents are for the most part qualities, characteristics, anything that exists only *in* a substrate. Thus whiteness does not exist except *in* white things. But the things in which these qualities exist are not in themselves whole bodies but are rather the ultimate constituents of which bodies are made. Since the *jawāhir* are not bodies but the noncomposite constituents (*ajzā'*) of bodies, they are frequently called atoms in English. Thus in the case of a white piece of chalk, it is not the piece of chalk as such that is the substrate of whiteness but the atoms of which the chalk is composed. Just as bodies may be broken down into atomic units, so may qualities. Each atom of which the piece of chalk is composed is a substrate for an atomic unit of whiteness. Underlying both the substrate and the accident—that is to say, the atomic unit of the body that appears to us as a piece of chalk and the atomic unit of whiteness—is the creative activity of God. God creates some existents as substrates and other existents as accidents. Both are existents in their own right, though contingent; the difference between them rests solely upon the divine will, the determinant of all contingent existence.

It is significant that of all the cosmologies the ancient and medieval world produced, the one to which the cosmology of the orthodox Muslim theologians is closest is that of the atomic materialists, even though the two cosmologies are by no means identical. It would seem that the Muslim theologians took refuge in the notion of the world's materiality as a way of safeguarding its Creator's immateriality and utter uniqueness. The Creator could be neither substrate nor accident, neither *jawhar* nor *'arad*; as the existent whose existence was necessary he must be above both of these categories and above the materiality entailed in them. On the other hand, by retaining the idea of a divine Creator, the Muslim theologians parted company with the ancient materialists and in so doing were constrained to introduce an important modification into the notion of a material world. While the ancients had conceived of atoms as eternal entities existing in ever changing combinations, the Muslim theologians—in their eagerness to deny the self-sufficiency and autonomy of the material realm and the consequent superfluity of a divine being—insisted, not only upon the createdness of the atoms, but also upon their intrinsic nondurability. Once created, an atom did not then continue to

exist in and of itself, as though needing outside help only to get launched on the course of existence. Anything that existed in and of itself existed necessarily and therefore eternally. Created existence by definition could not be self-sustaining. Therefore, it was necessary to assume that an atom, once created, would immediately thereafter cease to exist unless sustained by a continuing initiative on the part of the Creator. What was true of atoms was true also of accidents. This cosmology of continuously created atoms and accidents constitutes the distinctively Muslim theological formulation of the notion of the contingency of the world.

Both Āmidī's theology and his cosmology are constructed on the basis of rational argumentation without resort to revelation. This is not to say that Āmidī does not refer to revealed dicta in the course of his discussion of theological and cosmological topics. In the *Abkār al-afkār* he does this fairly regularly. However, the logical structure of Āmidī's thought is such as to rule out any dependency of theology proper and cosmology upon revelation. Revealed dicta can only confirm what rational argumentation has previously established; they are not in and of themselves a sufficient basis on which to establish the fundamental theological and cosmological tenets. According to Āmidī's logic, revelation cannot even be conceptualized except within a preestablished context consisting of the Creator and his creation. Included within this context are all the essentials of theology proper—God's existence, attributes, and acts—and of cosmology—that is to say, all the essentials of the body of doctrine relating to necessary existence and of the body of doctrine relating to contingent, or possible, existents. Especially crucial for the emergence of the concept of revelation is the divine attribute of speech, since revelation in Islam is, as we have noted, the revelation of the divine speech.

Revelation enters in as the supplier of knowledge of certain matters that lie beyond the reach of the unaided human intellect. These fall into two primary categories: certain matters relating to the present and future life of human beings and legal matters, that is to say, the rules of law. The first category embraces most of the contents of the Muslim creed (*ʿaqīda*), a summation of things to be believed. This includes such things as the resurrection of the body, the events of the final judgment (such as weighing human deeds on a scale and reading the divine records), the rewards and punishments awaiting all humans in the hereafter, the final destiny of believers and unbelievers, the criteria that distinguish the believer from the unbeliever, and the structure and function of political authority (*al-imāma*) among Muslims in the present world. Matters of this sort were included within the science of the theology under the heading of "aurally received (heard) matters" (*al-samʿiyyāt*).

“Aurally received” translated, in the minds of Muslim theologians, into “revealed,” for it was understood that revelation was inseparable from a body of audible words and that the hearing of these words was a necessary prelude to recitation and transmission to others. The rules of law, though also very much rooted in aurally received revelation, were in contrast placed outside the province of theology and made the concern of a separate science, that of jurisprudence.

While the knowledge derived from revelation is in itself beyond the reach of the unaided human intellect, its ultimate foundations are thoroughly rational; and only by virtue of these foundations does it constitute knowledge in the final analysis. For it is not possible for one to derive knowledge from revelation without the prior knowledge that what one takes to be revelation is indeed revelation, and this prior knowledge must necessarily have an extra-revelational basis. One cannot know from revelation what constitutes revelation: Muslim theology carefully avoids that circularity. It is through rational inquiry alone that one comes to the knowledge that a given body of words—that is to say, a text—constitutes or embodies revelation. Once one has attained this knowledge, then it follows that what one learns from the text belongs likewise under the heading of knowledge. For to know that a text constitutes or embodies revelation is to know that its words are God’s words or the words of his prophet, and what one learns from divine or prophetic words cannot but constitute knowledge.

We may at this point better understand a point which I made earlier—that the type of reasoning which I have designated as reasoning from texts is for Āmidī an extension of discursive reasoning. Reasoning from texts is concerned with much more than a correct understanding of the meaning of a given set of texts. It seeks to derive knowledge from these texts, an enterprise that can succeed only where there is a prior knowledge that the texts constitute or embody revelation, as has just been said. Consequently, reasoning from texts presupposes a process of discursive reasoning that takes one to the point where reasoning from texts, *conceived as a search for knowledge* (beyond the mere knowledge of the meaning of the texts), may properly begin. Reasoning from texts provides on its own no such starting point. To make the same point with reference to the *dalīl naqlī* (or *sam‘ī*), which I have called the “transmitted indicator”: the *dalīl naqlī* can have validity as an instrument of reasoning aimed at the attainment of knowledge only insofar as that validity is grounded in a body of *adilla ‘aqliya*, rational proofs that establish the theological and cosmological framework within which the *dalīl naqlī* may be identified as a datum of divine revelation. The *dalīl naqlī* thus rests upon the shoulders of the *dalīl ‘aqlī*.

The type of rational argument for the revealed character of any text that, according to Muslim theology, has been ordained by God himself—and the only type that, therefore, may be expected to succeed—takes the form of a certification of the prophethood of the human being from whom the text originally emanates. The certification of a person's prophethood amounts to an attestation of the truth of what the person claims about himself: that he has been made privy to the divine speech, that he has been called to be the bearer of that speech to mankind, and that whatever words he utters as representative of the divine speech are indeed just that. A person's status could not, in Muslim thinking, be separated from his own verbal claims about himself. Consequently, Muslim discussions of the certification of prophets are dominated by a concern with the truthfulness of the spoken claim (*sidq al-anbiyā'*). If one can be absolutely certain that a person claiming all that has just been mentioned is speaking truthfully, one has come as far as one needs to in the search for revelation; one stands at that point before the object of one's search.

The certification of all claims to prophethood hinges upon the presence of evidence, the all-important miraculous sign. Only a miracle can truly attest. One who appeals to the ordinary rising of the sun, for example, as an attestation of his prophethood is bound not to impress his audience. Not so one who is able to appeal to the sun's standing still at midday. The ordinary rising of the sun may be regarded as a sign of God's power or even mercy, and indeed the Qur'ān frequently refers to such ordinary phenomena as divine signs (*āyāt*). But they are not miracles in the strict sense of the term as defined in Islamic theology. According to that definition, a miracle is a departure from the observable regularities of the world (*kharq al-ʿāda, fi'l allāh al-khāriq li'l-ʿāda*).⁴⁵ As we noted in the discussion of atoms and accidents, Muslim theology affirmed God's continuous creation of the world from each moment to the next. All events occur, according to that theology, through direct divine creation. This being the case, the ordinary rising of the sun is no less an act of divine creation than is the sun's standing still at midday, should that occur. The two events differ, however, in that the former accords with observable regularities in the world while the latter does not. The observable regularities are therefore not regularities embedded in a natural order that operates independently of God; rather, they are regularities in the creative activity of God, and they display the wisdom and orderliness of their agent. To use the term in vogue in Muslim theology, the observed regularities of the phenomenal world represent the divine custom (*ʿādat allāh, sunnat allāh*). When God departs from his custom, his creative activity obviously takes on a special character; he is, in effect, drawing attention to something.

The first step in the certification of the truthfulness of a person's claim to prophethood is, therefore, the identification of a miraculous sign. This is not possible without an awareness of the regularities of the phenomenal world. Such an awareness, noted earlier, comes as a result of prolonged experience. A very young infant or severely retarded person might not be very much impressed with the sun's standing still at midday; anyone else would be. The prolonged experience leading to the awareness of regularities is an inductive process that gives rise first to opinion—an awareness not accompanied by full certainty—and then to knowledge, a subcategory of necessary knowledge. Once a knowledge of the regularities of the world emerges, a bona fide knowledge of miracle becomes possible. One need not in this case be in any doubt when in the presence of a miracle.

The degree of inductive knowledge, of course, varies from individual to individual: furthermore, some individuals may have great amounts of inductive knowledge with respect to certain sectors of the phenomenal world and limited amounts with respect to other sectors, and within a given sector there may be a great deal of variation. Accordingly, the ability to grasp the presence of a miracle will vary from individual to individual. A physician will have a much more profound appreciation of a miracle of healing than one who is not a physician, though the latter will by no means be without appreciation. Similarly, an astronomer will have the more profound grasp of miracles involving the heavenly bodies.⁴⁶ Once a miracle has been identified with full certainty, there may be need for further argument—for example, argument for linking the miracle (*iqtirān*) with the claims of a particular prophet.

We may better see how a rational argument for the truthfulness of claims to prophethood is constructed if we turn to the case of the Prophet Muhammad. While Āmidī describes the miraculous signs attesting the truthfulness of the Prophet Muhammad's claims as myriad, he makes it absolutely clear that none are as patent and effective as the primary sign, which is the revelation itself—or rather, to be more exact, the part that he conveys to mankind verbatim through recitation, which is accordingly called the Qur'ān (from *qara'a*, "to recite"). The Qur'ān is the Prophet's faithful recitation of the actual words he heard from the mouth of the Angel Gabriel, words that constitute the divine speech in its created phonic form (*al-kalām al-lisānī*), which is but the manifestation of an uncreated reality, the internal speech of God (*kalām al-naḥs*). As a faithful recitation of the divine speech, the Qur'ān represents one of two ways in which the divine speech is manifested within the created order, the way of recitation as opposed to the way of prophetic recasting (*ikhbār*). The latter is represented by the Sunna.

The reason why the recited part of the divine revelation alone constitutes the sign of the prophethood of Muhammad has to do with the nature of the miracle involved. It is a fundamentally literary miracle; that is to say, its literary merits surpass what is possible within the limits of ordinary human ability—the ability that God regularly or ordinarily creates in human beings, which we become aware of through inductive inference from our experience over time of what human beings are able to do. God could presumably, were he so to will, create in a prophet the ability to perform extraordinary—that is to say, miraculous—feats. However, in his wisdom he wills rather that the miraculous signs of the truthfulness of prophets should occur apart from human ability.

Accordingly, the Prophet Muhammad is nothing more than a transmitter of the literary miracle that attests the truth of his claims; his own created ability does not enter in. God elects that his greatest miracle should be entirely suprahuman. The very word for miracle in Arabic, *mu'jiza*, “disabler,” suggests that this is the case. A miracle is an event that renders those who witness it “disabled” in the sense that they become aware of their inability to bring about a like event. The phenomenal world is filled with events that transcend human ability, displaying the magnitude of the divine ability—the rising of the sun, the falling of rain, the growth of vegetation, and so on—but because human beings become accustomed to the regular occurrence of such events they lose the sense of their own inability to perform comparable feats. In contrast, the miracle, by virtue of its extraordinary character, rivets human attention upon the inimitability of the truly suprahuman event. As a literary miracle, the Qur'ān therefore impresses upon the consciousness of its audience the inimitability of its literary qualities.

Āmidī's argument for the literary miraculousness of the Qur'ān consists of two main parts: the first affirms that the miracle of the Qur'ān may be apprehended directly, the second that it may be apprehended indirectly through circumstantial evidence. Direct apprehension occurs through what amounts to comparative literary analysis. Such analysis requires a combination of wide experience (*ikhtibār*) in the domain of human literature, especially that of the ancient Arabs, and careful reflection (*al-nazar bi-ʿayn al-ītibār*) upon the Qur'ānic material in the light of one's experience. For only through experience, as we have already noted, can one know what is possible within the limits of ordinary human ability (as determined by the divine custom) and then, in the light of this knowledge, ascertain the presence of the miraculous.

Once one has achieved the requisite combination of experience and careful reflection, one will conclude that the Qur'ān is the most evident of all miracles, the most patent of all departures from the regularities (*ʿādat*) of

the phenomenal world, and that it transcends human ability altogether. For one will discover in the Qur'an an arrangement of words and phrases that is truly unique and marvelous (*gharīb*) as compared to the styles and metrics employed by the most accomplished Arab litterateurs. One will also discover in it an incomparable degree of eloquence and conciseness, the compressing of a wealth of apposite meanings into parsimoniously constructed phrases. One will find even in the balancing of abstract and concrete language, clear and obscure, a marvel beyond human emulation. Āmidī finds an interesting analogy for the superiority of the divine speech recited by Muhammad over the literary achievements of the Arabs. God distinguished the Arabs from all other peoples by bestowing upon them the gift of a superior language, the resplendent Arabic tongue. Therefore it can be said that the superiority of the divine speech over the speech of the Arabs is analogous to the superiority of the speech of the Arabs over that of non-Arabs (*al-ʿajam*, often a reference to Persians).⁴⁷

The second main part of Āmidī's argument for the miraculous character of the Qur'an appeals to the circumstances surrounding the Prophet's recitation in the hearing of his contemporaries. Throughout the greater part of the Prophet's mission, many of his contemporaries refused to accept his prophethood and to submit to his authority, preferring to cling to their tribal loyalties and to oppose him, both verbally and through force of arms. So determined were they in their resistance that the Prophet was compelled to use force himself against them. Had they been able to discredit the Prophet by imitating the Qur'an, thus casting doubt on its miraculous character, they would certainly have done so, especially considering the hardship that the wars against the Prophet were placing upon them. As Arabs they were a people who prided themselves in their strength and prowess and detested submission to the rule of a higher authority. Surrender to the Prophet could only be a humiliation for them, to be avoided by whatever means. Therefore, when the challenge to produce speech comparable in eloquence to that of the Qur'an was presented to them, they had every motive to take up the challenge, had they been able. The fact that they did not makes them silent witnesses to the reality of the Qur'an's inimitability.

Having set forth his main argument, which treats the miracle of the Qur'an as a literary miracle, Āmidī adds a further and much briefer argument that rests upon a somewhat different perspective, that of content. Again, there are two components to the argument. First, we are told that the Qur'an contains information about bygone peoples and events that the Prophet could not have had access to through existing sources (ancient chronicles), since he, being unlettered (*ummi*), was not versed in these sources or in the sciences in

which they were investigated. Here the miracle of the Qur'ān is directly proportionate to the Prophet's lack of formal education, since the information itself (in contrast to the literary style of the Qur'ān) cannot be regarded as unique to the Qur'ān. Its presence is, on the supposition of the Prophet's own unfamiliarity with it, an indicator of the Qur'ān's suprahuman origin. The second part of the argument shifts from Qur'ānic information about the past to Qur'ānic information about the future, that is to say, about events that had not yet taken place at the time of revelation, which subsequently took place, again confirming the suprahuman origin of the Qur'ān.⁴⁸

In keeping with the dialectical spirit of all his writings, Āmidī is not content merely to state an argument. He must deal with specific objections to the doctrine that he is upholding. However, in the ensuing debate we find Muslims pitted, not against fellow-Muslims as is the case with most of the issues we have dealt with so far (most typically, Ash'aris against Mu'tazilis) but against non-Muslims, principally Christians and Jews. The debate takes us to a point much like that at which we find ourselves when dealing with the issue of God's existence. Just as there could not be an inter-Muslim debate over the existence of God (as there could be over his attributes, the createdness or uncreatedness of the Qur'ān, the ontological ground of human agency, and similar issues in theology and cosmology), so there cannot now be an inter-Muslim debate over the miraculousness and inimitability of the Qur'ān, linked as it is to the prophethood of Muhammad. All Muslims are bound by their common confession ("There is no god but God, and Muhammad is God's messenger") to affirm both God's existence as sole deity and the truthfulness of Muhammad's claim to be a prophet as attested by the miracle of the Qur'ān. On the other hand, the debate over the existence of God cannot pit Muslims against Jews, Christians, and other adherents of earlier prophetic religions. All monotheists, obviously, stand on the same side of the dividing line in that debate. It is on the issue of the attestation of Muhammad's claim to be a prophet that Muslims and other monotheists find themselves confronting each other.

The series of objections to the doctrine of the Qur'ān's inimitability recorded by Āmidī begins with a query about the authenticity of the present text of the Qur'ān: how do we know that the text now before us contains the very words that first were heard upon the lips of Muhammad? This is a question that is treated at greater length within the science of jurisprudence, and we shall return to it in a later chapter.⁴⁹ It is a lead-off question in the present debate since there is no point in proceeding to argue for the Qur'ān's miraculous character unless the link (*iqṭirān*) between the Qur'ān and Muhammad can first be established beyond any doubt; otherwise, the miracle, if

demonstrated, will not be an attestation of Muhammad's prophethood. The second objection begins the attack on the miracle itself. The term "Qur'an" can only refer to either of two things: that which is recited or the act of recitation itself. Neither can be a miracle: that which is recited because it is an attribute of God (the divine speech) and does not, therefore, exist within the created order in which miracles take place; the recitation itself because it is an act of the Prophet that proceeds from an ability created in him and does not, therefore, qualify to be considered a miracle (*mu'jiza*), since a miracle transcends human ability.

This objection, Āmidī assures us, has more bark than bite, for the miracle of the Qur'an need not be located either in the realm of the divine speech as such or in the realm of prophetic recitation as such; it should rather be located in the realm of divine action (*fi'l*), for it is quite possible to identify the miracle with God's act of creating mundane words as the embodiment of his eternal speech. We thus have, in addition to a divine attribute and a human act (recitation), a third indispensable factor: a divine act. The miracle may be placed, without self-contradiction, within the domain of this third factor.

The third objection harps on the differences of opinion among Muslims concerning the precise nature of the miracle of the Qur'an. Some say it consists of the arrangement of its words, others that it consists of the pithiness of its expressions, and still others that it consists in diverting the Arabs from any attempts to imitate the Qur'an. If Muslims so disagree among themselves, the miracle can hardly be said to be plainly evident as Muslims claim it to be. Responds Āmidī: people vary in their perception of the miracle in accordance with the variation in their own sensibilities and experience. The miracle thus has many aspects, and some will view it primarily in terms of one of its aspects as opposed to others. This does not militate against the reality of the miracle.⁵⁰

The remaining objections take to task the circumstantial evidence for the Qur'an's inimitability cited in the second part of Āmidī's main argument. How are we to rule out the possibility that the Prophet's opponents did in fact deny the inimitability of the Qur'an but all felt inclined to keep their thoughts to themselves or that they openly voiced their denial, accepting the challenge to imitate the Qur'an, but the people who came after them found reason not to report this or simply forgot about it? How can we rule out the possibility that these opponents of the Prophet were intimidated by fear of reprisals or that they felt that their acceptance of the challenge would not deter the Prophet from continuing his mission or that they considered that their belittling of the Prophet by simply ignoring his challenge would do

more to discredit him than would their acceptance of the challenge or that they decided that the use of the sword against the Prophet would be more effective than refutation of the Qur'an's inimitability?

Āmidī's reply is that if indeed the Prophet's opponents—among whom, after all, were the most eminent of the Meccan aristocrats—had managed to invalidate something so crucial to the Prophet's credibility as the miracle of the Qur'an, this surely would have become widely known and people would have had every reason to report it to posterity. It is empirically impossible—that is to say, impossible within the context of the humanly perceived regularities of the created order⁵¹—that they should have done otherwise. Fear of reprisal could not have prevented the Prophet's opponents from speaking up or others from reporting what they said, for matters that are subject to extreme reprisal are even more likely to arouse talk than other matters. As for the rest of the objection, we must remember that the Prophet continually laid stress upon the inability of his Arab opponents to respond to his challenge and that, considering how boastful and proud of their literary abilities they were, it is empirically impossible that they would not have responded, had they been able.

Further objections follow, among which one in particular prompts Āmidī to underscore an important point bearing on the miracle of the Qur'an. There are, runs the objection, people who can produce words and verses just like those in the Qur'an. If they can imitate parts of the Qur'an, they can imitate the whole, since the whole is but the sum of the parts. This means that the world is full of people who are capable of imitating the Qur'an. Āmidī in response insists that there is a great difference between imitation of a part—a few words or verses—and imitation of the whole. One may be able to produce a few words or phrases resembling words or phrases in the works of the great poets and litterateurs; but this does not make one capable of producing a great work of poetry or elegant prose. Therefore, if we find ourselves doubting the miraculous character of particular Qur'anic words or verses simply because some people are able to imitate them, this does not mean that we have reason to doubt the miraculous character of the Qur'an in its entirety. The miracle resides most truly in the whole, not in discrete parts taken in isolation.⁵²

Thus in looking back over the entire gamut of the theology expounded by Āmidī we can see a progressive journeying of the human intellect from the starting point of the human experience of the world and the human grasp of the axioms underlying rational inquiry to the knowledge of God's existence, attributes, and acts and of the composition of his creation and from there on to the acknowledgement of the prophethood of his prophets and submission

to the revelation mediated through them. However much revelation may confirm the discoveries of the human intellect at particular points along the way, the human intellect is in no sense dependent upon it at any point. The intellect, applying its powers of reasoning to the raw data of sensory experience (both immediate and generalized through induction), blazes the trail entirely on its own. The initial movement toward God and the subsequent movement toward revelation—that two-phased total movement that culminates, in the case of Muslims, in the confession “There is no god but God, and Muhammad is the messenger of God”—is entirely rational. There is no need to take anything “on faith,” as we normally understand that phrase. Belief is assent on rational grounds, nothing more or less; it is not an act of blind faith, nor even of faith prompted by but ultimately transcending the dictates of human reason. Neither Kierkegaardian leaps in the dark nor Pascalian wagers have a place in the thinking of the Muslim theologians. If I have reflected properly on the contingency of things that make up the world in which I live and on the miracles that accompany the appeals of prophets, I have no other course to follow than belief in God and acceptance of his revelation. The unbeliever is only acting contrary to his own nature as a rational being.

THE *FIQH* POSTULATES

Although Āmidī, after discussing the theological postulates of the science of theoretical jurisprudence (*‘ilm usūl al-fiqh*), turns next to the linguistic or Lughā-related postulates and only thereafter to the *fiqh* postulates, I shall reverse the order of treatment of these two remaining categories of postulates and deal first with the *fiqh* postulates. Āmidī does not reveal any logical grounds for his order of treatment, and it may have been a matter of indifference to him what order was adopted for these two categories. While I generally shall attempt to avoid departures from Āmidī’s structuring of his discussions, in this case I am departing from Āmidī’s lead because I find the full significance of the Lughā-related postulates to be more readily comprehensible if the *fiqh* postulates have first been considered. Furthermore, there is some overlap between the topics covered under the heading of *fiqh* postulates and the subject matter of Muslim speculative theology, so that the discussion of the former may be considered as, in part, an extension of the theological discussion.

Quite obviously, the investigation of the accidental characteristics of the indicators of the rules of law—which, as we earlier noted, is among the primary tasks of Islamic theoretical jurisprudence¹—cannot begin unless there is a correct prior understanding of the nature of a rule of law and of the various factors that are entailed in such a rule. These matters do not, in Āmidī’s view, belong within the subject matter proper to theoretical jurisprudence as such. They belong, rather, within the domain of practical jurisprudence, that is to say, of the science of *fiqh*.

The subject matter of any science, Āmidī has previously told us,² cannot include matters that enter into the *conceptualization* of that subject matter. This conceptualization must precede all investigation proper to the science. Therefore, whatever matters enter into this conceptualization must be either axiomatic or the result of investigation proper to some other science. The subject matter of theoretical jurisprudence is, let us recall, the indicators of

the rules of law. The conceptualization of this subject matter requires, clearly, an understanding of “indicator” and “rule of law.” Both of these concepts derive from other sciences: “indicator” from the science of theology and “rule of law” from the science of practical jurisprudence or *fiqh*. We have already considered the explication of the former concept supplied by theology. What remains to be considered is the explication of the latter concept as supplied by the science of *fiqh*.

This dependence of theoretical jurisprudence upon practical jurisprudence in the conceptualization of its subject matter creates a problem of sorts, since Muslim thought also considers practical jurisprudence to be dependent upon theoretical jurisprudence. This latter dependence arises from the fact that valid articulations of the law are possible only after the indicators of the law have been identified and their functioning understood. In order to avoid the trap of circularity, Āmidī insists that what theoretical jurisprudence draws from practical jurisprudence is merely the *idea* of a rule of law considered apart from any particular articulations of rules of law; it also draws postulates relating to the various factors that are entailed in the idea of a rule of law.³

Thus while practical jurisprudence, to the extent that it embarks upon the actual articulation of the law, is dependent upon theoretical jurisprudence, it is not dependent on that science in every respect: to the contrary, we are here encouraged to believe that there is one respect in which the dependence relationship between the two sciences is just the reverse. It appears that Āmidī considers practical jurisprudence able to carry on some sort of inquiry without any dependence upon theoretical jurisprudence—inquiry into the nature of a rule of law and of the various factors entailed in a rule of law. Because theoretical jurisprudence is incapable of this inquiry, it is in this respect dependent upon practical jurisprudence. However, the relationship between the two sciences is clearly complex, and while Āmidī seems confident that he has avoided circularity he leaves us somewhat in the dark as to precisely how that relationship is to be understood. Moreover, he does not show us just where in the structure of the science of practical jurisprudence the discussion of the nature of a rule of law and of the factors entailed in it was placed. In fact, since he wrote no work on *fiqh*, we have no way of knowing how he viewed the structure of that science.

Āmidī discusses the concept of a rule of law (which we have identified as the divine categorization of an act as obligatory or forbidden, valid or invalid⁴) and of the various factors entailed in it under the heading of *fiqh* postulates (*al-mabādi’ al-fiqhīya*). But this heading embraces not only the rules of law but the entire gamut of divine categorizations of human acts. All of these categorizations have relevance for theoretical jurisprudence, since one

of its tasks is, as we shall see, to develop ways of segregating rules of law from other types of categorizations. Furthermore, one cannot adequately understand those types of categorizations that constitute rules of law except within the framework of all the types. It is thus not merely the concept of a rule of law that comes up for discussion in the section of the *Ihkām* that deals with *fiqh* postulates, but rather the more comprehensive concept of a Sharīʿa categorization (*al-hukm al-sharʿī*) and the various factors it involves. In the following pages, I shall attempt to present Āmidī's full discussion of the Sharīʿa categorizations as it is found in the pages of the *Ihkām*.

Every Sharīʿa categorization of an act, Āmidī points out, entails four factors: a categorizer, the categorization itself, the act categorized, and the agent to whom the categorization applies (the agent of the categorized act). These are called in Arabic *al-hākim*, *al-hukm*, *al-mahkūm fihi* ("that which the categorization concerns," i.e., the thing categorized), and *al-mahkūm ʿalayhi*.⁵ It is around these four factors that the *fiqh* postulates are organized in Āmidī's presentation. With respect to each of them, Muslim thought raised a number of issues that brought diverse opinions into confrontation within the familiar setting of disputation. It is in the midst of this diversity that the individual inquirer was obliged to work out his own understanding of the *fiqh* postulates.

With regard to the first of the above-mentioned factors, the Ashʿarī orthodoxy to which Āmidī subscribed maintained a clear-cut position: God, and God alone, is the one who categorizes human acts; that is to say, God alone decides whether an act is required, recommended, neutral, disapproved, or prohibited, just as he alone decides whether an act is good or bad. The latter two categories take us rather far from the domain of law per se, but here as always ethical and legal concerns were intertwined in Muslim thinking. Other categories we have considered (valid, invalid, etc.) do not appear in discussions concerning the categorizer, although we may assume, I think, that the Ashʿarī position would extend to these categories as well: God alone decides, for example, whether an act (transaction) is valid or invalid.

This way of thinking put Ashʿarī orthodoxy at odds with all rationalist views of law and morality. Within medieval Islam the principal proponents of ethical-legal rationalism were the Muʿtazilis, whose ideas were to some extent to survive, after the demise of that school, within Shīʿī Islam. It is therefore primarily with Muʿtazilī adversaries that the orthodox, in Āmidī's time and before, were obliged to enter into debate in contending for their point of view. The Muʿtazilis maintained that the human intellect, functioning entirely on its own and without the help of divine revelation, was capable of categorizing human acts; consequently, the orthodox could effectively argue their case

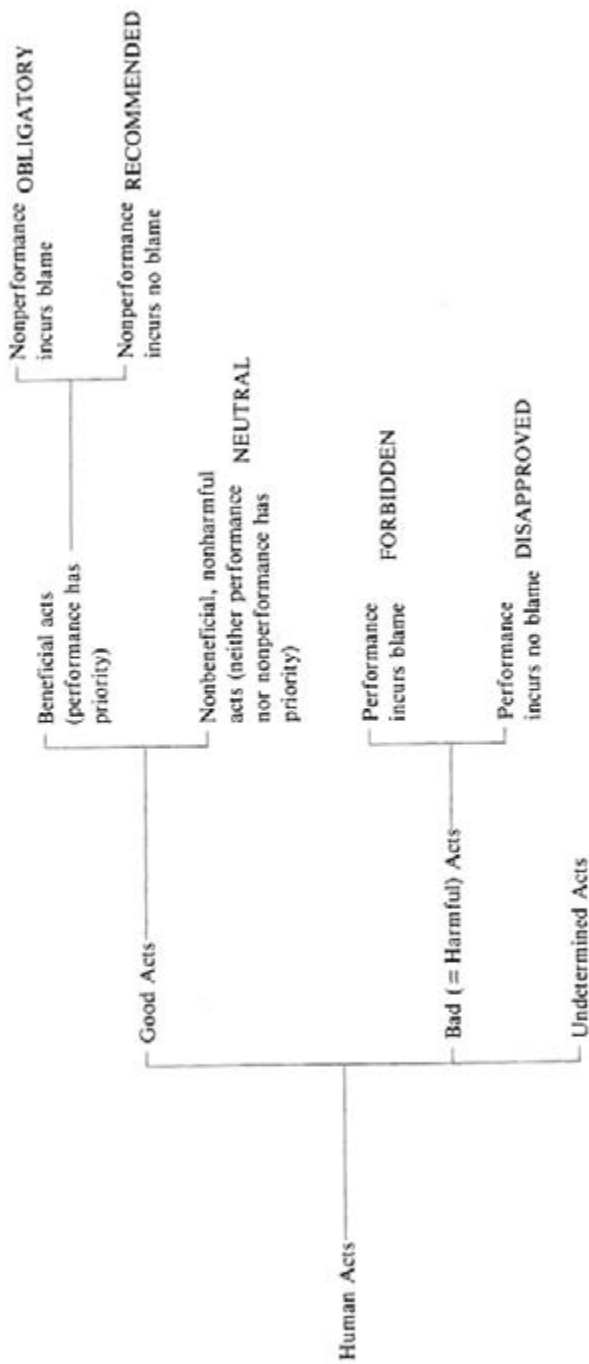
only by refuting this contrary point of view. A categorization of an act was, in Muʿtazilī thinking, more a *discernment* that an act belonged within a certain category than a unilateral and essentially inscrutable *placement* of the act within a certain category. This is not to say that the Muʿtazilis dissociated the Sharīʿa categorizations from deity. Since God was for them a rational being, these categorizations did in a sense proceed from him; but inasmuch as man, too, was a rational being they could be said to proceed from him as well. As in Christian natural law thinking, in Muʿtazilī thinking the human intellect was a link between man and God whereby man could, apart from any special revelation, come to an understanding of God's intentions. What distinguished orthodox thinking, therefore, was the belief that God *alone*—never man—was the source of the Sharīʿa categorizations. This translates, of course, into an utter dependency, on man's part, upon prophetically mediated revelation for a knowledge of these categorizations.

Before we consider the orthodox case against the Muʿtazilis, it will be useful first to take cognizance of the Muʿtazilī understanding, as described by Āmidī, of the basic categories entailed in the Sharīʿa categorizations of human acts.⁶ Muʿtazilī thinking on this subject was far from monolithic, and Āmidī's account must be taken as representing his understanding of the view most widely held by the later Muʿtazilis, not the views of all members of that school.

All acts, according to the general Muʿtazilī view, are divisible in the first place into three categories: good, bad, and undetermined. Undetermined acts are acts that the intellect is unable to categorize as either good or bad. Good acts are further divisible into the following subcategories: acts entailing benefit or harm such that the performance of the acts has priority over (*tarajjaha*: literally, "outweighed") nonperformance and acts entailing no such benefit or harm and no such priority. The latter subcategory is identical with the category of *neutral* acts, one of the categories within the already familiar set of five Sharīʿa categories. The former subcategory is further divisible into acts whose nonperformance incurs blame and acts whose nonperformance does not incur blame, these being the *obligatory* and *recommended* acts of the familiar system. Bad acts are not further divisible with reference to the principle of priority: in the Muʿtazilī view considerations of benefit or harm gave the nonperformance of *all* such acts priority over performance. These acts can, however, be further divided on the basis of the principle of blame, producing acts whose performance incurs blame and acts whose performance does not incur blame, in other words, *forbidden* and *disapproved* acts. This overall classification may be represented by means of a diagram.

As described by Āmidī, the Muʿtazilis viewed the intellect's categorization of acts as good or bad as somewhat different from the more specific

Figure 1



categorization of acts as obligatory, recommended, neutral, disapproved, or forbidden. In categorizing human acts, the intellect thus seems to have been involved in two separate categorizations: first a categorization within the framework of the broader categories of good and bad, and then a subsequent categorization within the framework of the more specific categories. We shall consider each of these in turn, along with Āmidī's arguments against them.

When the Mu'tazilis spoke of the intellect as categorizing an act as good or bad (*hassana aw qabbaha*, or *hakama bi'l-husn aw bi'l-qubh*), they did not mean that the intellect transformed an act that was previously neither good nor bad *into* a good or bad act, that the intellect *made* acts good or bad. Orthodoxy assigned such a role to God, since in its view acts were indeed uncategorized prior to a divine categorization: God *did* make acts good or bad. The role of the intellect was understood quite differently by the Mu'tazilis. According to Āmidī, they considered acts as being good or bad "by virtue of their essences" (*li-dhawātihā*) and saw the intellect as having the ability to discern this inherent goodness or badness. This discernment might come about as a result either of immediate intuition or of discursive reasoning. Thus one knew through intuition that religious belief is good and through discursive reasoning that hurtful truth-telling is good.⁷ It was this discernment that comprised the intellect's categorization of acts as good or bad. The intellect's categorization was, in other words, recognitory, not constitutive.

Before launching his attack on the Mu'tazilī position, Āmidī notes that the orthodox do not necessarily deny altogether that the intellect may categorize an act as good or bad. What they deny is that this categorization amounts to a discernment of goodness or badness attributable to the act "by virtue of its essence." Their position is that goodness or badness is attributable to an act by virtue of something extraneous to the act. An act is not good or bad of its own accord but becomes so through the working of an extraneous factor or factors. An act that is presently good through such a factor may thus subsequently become bad through the same factor, or some other factor. These extraneous factors may consist of an end in relation to which an act is good if it conforms to that end and bad if it does not, a sanction of a sovereign in relation to which an act is good if the sanction is a pronouncement of praise or bad if it is a pronouncement of blame, or the state of the actor himself in relation to which the act is good if that state is one of freedom from tyrannical duress and bad if that state is one of subjection to such duress.⁸ Factors belonging to the first category involve a process of reasoning: the intellect reflects upon the ends that are to be accomplished through a certain act and then categorizes the act as good or bad in the light of those ends. The third category has a special relevance to the question of the applicability of

the attribute “good” to neutral acts, which Āmidī deals with only very briefly in the *Ihkām*.⁹ The second category presumably includes the sanctions both of earthly sovereigns and of the Divine Sovereign. Sanctions of the Divine Sovereign, of course, take precedence in orthodox thinking, over all other extraneous factors. By extricating goodness and badness from the essence of human acts, orthodoxy opens the door to the free working of the divine sovereignty. If an act is good of its own accord, God has not *made* it good and thus cannot make it bad if he so wills. To say that an act is bad by virtue of a divine pronouncement of blame and good by virtue of its essence is to produce a genuine contradiction.

On the other hand, to say that an act is bad by virtue of a divine pronouncement of blame and that it is good by virtue of a human categorization relating to an end to be accomplished involves no such contradiction. The latter alternatives *both* entail a relativistic view of goodness and badness. This relativism of the orthodox enabled them to remain faithful to the principle of the divine determination of the goodness and badness of acts, while allowing scope for goodness and badness to operate as *concepts* in human thinking, independently of the divine determination. The pious would preoccupy themselves wholly with the divinely determined good and bad, while the rest of the world went about living in the light of the less momentous dictates of human reasoning.

After reviewing and criticizing a number of “weak” arguments that his fellow Ash‘arīs had leveled against the notion of the inherent goodness and badness of acts, Āmidī presents the following “reliable” (*mu‘tamid*) argument.¹⁰ Those who say that an act is good or bad “by virtue of its essence” (that is, of its own accord) must mean one of two things. Either they mean that the goodness or the badness of the act is intrinsic to the very essence of the act or, acknowledging that this cannot be the case, they mean that the goodness or the badness of the act *inheres in* that essence in the manner of an accident. (Apparently, those who adopt the latter interpretation understand the statement that a given act is good or bad by virtue of its essence to mean that the act is good or bad by virtue of its being a substrate in which goodness or badness inheres. What is common to the two interpretations is the notion that in order to discover whether an act is good or bad we must look to the act itself and not to some factor that is entirely extraneous to the act. The difference has to do with whether we must look to the essence of the act or to some accident which inheres in that essence. An accident is, of course, extraneous to the essence of an act, as Āmidī notes; but the factors which the Ash‘arīs allow to enter into deliberations over the goodness or badness of an act—an end, a sanction of a sovereign, the state of the actor—are extraneous both

to the act's essence and to its accidents.) If goodness or badness were intrinsic to the very essence of the act, then anyone familiar with the essence of the act would know that the act is good or bad. But it is quite possible to be familiar with the essence of an act without knowing that the act is good or bad. I can know *what* lying is without knowing whether in a given case it is good or bad. Therefore, the goodness or badness of an act cannot be intrinsic to its essence. If, on the other hand, we take the goodness or badness to be an accident inhering in the essence of the act, we still have a serious problem. Since an act is itself an accident, we are in effect affirming that an accident inheres in another accident, which is impossible. Thus, both interpretations of the notion that acts are good or bad by virtue of their essences fall victim to a *reductio ad absurdum*.

The intellect's categorization of acts as obligatory, recommended, neutral, disapproved, or forbidden entailed, in the thinking of the Mu'tazilis, somewhat different considerations. These Āmidī deals with in his discussion of the question of whether the intellect is able to judge whether one who has received a benefit is under an obligation to thank his benefactor.¹¹ It had been the practice of the Muslim theologians to focus their attention on this question, for the Mu'tazilis had made a cause célèbre of their contention that one does not need a divine revelation to know that one is under obligation to thank one's benefactor. This seemed to be, in the Mu'tazilī view, a clear-cut case of rational obligation, something one is *required by reason* to do. One needed only one instance of an undeniably rational obligation to prove that such a thing existed; once one had proven that there was such a thing as rational obligation, one had presumably opened the door to a rational determination of the other four categories.

While an act was, for the Mu'tazilis, good or bad by virtue of its essence, it could not, by virtue of that essence, enter the more restricted domain of obligatory acts. Although the Mu'tazilis were confident that every rational person was capable of categorizing the giving of thanks to one's benefactor as obligatory, they appear from Āmidī's account to have viewed this categorization as based on a consideration, not of the essence of the act, but of something extraneous to the act. This extraneous factor was the reason, or rationale (*fā'ida*, *hikma*), behind the obligation, one that was related to the act but was not inherent in it. An act such as giving thanks to one's benefactor could not be obligatory except by virtue of some such reason. It was in consideration of this that the intellect categorized the act as obligatory. Mere awareness of the act was not sufficient. For an act to be obligatory without a reason made no sense. Even acts prescribed by God could be considered as obligatory only by virtue of a reason, and it was with reference to the reason

rather than to the divine prescription as such that the intellect categorized such acts as obligatory. To make an act obligatory by sheer fiat without a justifying reason amounted to outright frivolity, and frivolity—being bad—could not characterize deity.

It is interesting to note that, whereas the Muʿtazilis rejected the relativism of the orthodox with respect to the goodness and badness of acts, they seem to accept a kind of relativism with respect to the obligatoriness of acts. Just as the orthodox made the goodness and badness of acts dependent on something extraneous, so now the Muʿtazilis seem to adopt a similar position with regard to obligation. But the orthodox themselves have a very different view as to what this extraneous factor is. Whereas for the Muʿtazilis it is a reason behind the obligation, for the orthodox it is nothing other than a sheer determination on God's part, his imposition of the obligation: an obligatory act is nothing more or less than an act that God makes obligatory by his decree, whether there be a reason behind it or not. The orthodox allowed the intellect to categorize things as good or bad by virtue of ends to be accomplished, while insisting on the priority of divine decrees concerning the goodness or badness of things over human categorizations; when it came to categorizing things as obligatory, however, they withheld this privilege altogether from the human intellect. A qualified sort of rational goodness and badness was possible; no sort of rational obligation was possible.

ʿAmidi records, and in his subsequent discussion defends, two somewhat different criticisms of the Muʿtazili position on obligation.¹² The first focuses on the notion of a justifying reason or rationale behind an obligation. How is such a reason to be conceived? It cannot relate to God, for God cannot be subject to anything that might be counted a reason for an obligation. God cannot, for example, receive benefit from the imposition of an obligation. But the notion of a reason relating to the creature is equally problematic. If we say, for example, that one is under an obligation to give thanks to one's benefactor because the giving of thanks is a good thing, we are in effect saying that the goodness of an act is the reason for being obligated to perform it, that the imposition upon any person of the obligation to give thanks amounts to an imposition of an obligation to do something good. But it has already been shown that nothing can be good in and of itself such that one may speak in absolute terms (in contrast to the relative terms allowed by the Ashʿarīs) of a rational good. Since one cannot declare the giving of thanks to a benefactor to be an absolute good, one has nothing that one may regard as the reason for its being obligatory. Robbed of the sense that in giving thanks one is doing a good thing, one can only regard the giving of thanks as a mere burden the taking on of which has no rationale and therefore no rationally perceived urgency.

The second line of criticism argues that the Muʿtazilis do not succeed in establishing what they really contend concerning obligatory acts—that is, that the intellect, in categorizing an act as obligatory, actively confers upon the act the status of an obligatory act. Here it is not, apparently, a question of discerning that an act *is* obligatory: that would be possible only if the act were obligatory by virtue of its essence. Now, argues Āmidī, there is an agreement among all parties to the debate over obligatory acts that the issue in the debate is whether, in view of the fact that acts cannot be obligatory by virtue of their essence, it is God who makes them obligatory or the human intellect. There is, according to the consensus, no third possibility. In other words, since acts cannot *be* obligatory by virtue of their essences, they must *become* obligatory by virtue of the action of some agent upon them, and this agent must be either God or the human intellect—there can be no other, according to the consensus.

The Muʿtazilis hold that it is the intellect that makes an act obligatory when it categorizes it as such for some reason. But, argues Āmidī, if the intellect categorizes the act as obligatory *because of* a reason, it cannot itself be truly said to be the agent that *makes* the act obligatory. The logic of the Muʿtazilī position is that it is the reason (i.e., the rationale), not the intellect as such, that is making the act obligatory, for this reason must be assumed to have an existence apart from the intellect, which merely perceives it. But this contradicts a consensus to which the Muʿtazilis themselves are party—that nothing apart from the intellect or from God can make an act obligatory. Since the Muʿtazilis have failed to show that the intellect *makes* acts obligatory and since they have agreed that acts must be made obligatory either by God or by the intellect, they should concede that it is God who makes them obligatory.

This has all the marks of an *ad hominem* argument. We may wonder why reasons cannot be the things that make acts obligatory, with the intellect's role being that of passive discerner. But if Āmidī is indeed correct in including the Muʿtazilis in the consensus to the effect that the intellect must be more actively involved or not at all, then his argument has definite validity in the face of this consensus. On the other hand, one may wonder whether Āmidī is not here stretching a point a bit too far. Is he perhaps taking a Muʿtazilī contention—that the intellect makes acts obligatory—and interpreting it in a rigorously literal manner that the Muʿtazilis themselves would not have accepted? Is he perhaps wrongly taking “make” (*jaʿala*) to signify an efficient causality that was not a part of Muʿtazilī thinking? Is there not a sense in which the intellect's discovery of reasons for an act's having an obligatory character may be spoken of as making the act obligatory?

In any case, the advocates of rational obligation, as might be expected, do not give up easily; Āmidī is compelled to deal with a number of objections to the orthodox argument as well as a counterargument.¹³ The counterargument raises an issue of crucial importance for our understanding of Muslim thinking about obligation and therefore merits our attention, along with the orthodox response to it. It runs as follows. The existence of God and the prophethood of prophets are not axiomatic. The knowledge of these two verities (which correspond to the two components of the Muslim profession of faith) is therefore attained only through discursive reasoning. Until we have engaged in the requisite reasoning, this knowledge will not be present in our minds. Since this knowledge is the very foundation of Islam, it must *become* present in our minds. For this reason, all human beings are under an obligation to engage in the necessary reasoning. (This, incidentally, makes obligatory the theological enterprise undertaken in the science of *kalām*.)

But such an obligation must necessarily be perceptible to the unaided reason, since prior to the acceptance of God's existence and of the prophethood of prophets one is not in a position to identify a divine revelation. One cannot, prior to acknowledging that God exists and that the words of a certain prophet constitute a revelation from him, be expected to learn from revelation that one is under an obligation to engage in the reasoning that will lead to that crucial point. Therefore, there must exist at least one instance of rational obligation, and this one instance is sufficient to establish the case for rational obligation in general. Those who deny the possibility of rational obligation in fact make a mockery of the prophetic mission. Prophets charge people to consider the signs of God's existence and of their own prophethood and to reason among themselves about these signs. But this charging makes no sense if it has no rational basis. If there be no such thing as rational obligation, then, contrary to what all Muslims believe, prophets may be silenced by their audiences, for an audience may say, "We know of no obligation to reason among ourselves about the signs of which you speak; therefore, we shall ignore you and continue in our heedlessness of God's existence and of your prophethood." Such words will, in the absence of rational obligation, stop the mouth of any prophet. There is nothing a prophet can say in reply.

The orthodox response to this potentially damaging argument is a true example of theological subtlety. The obligation to engage in the reasoning that leads to Islam proceeds no less from revelation than any other obligation. One need not, however, possess the knowledge that the words of a certain prophet constitute revelation in order to be subject to an obligation that emanates from that revelation. One need only be exposed to the *possibility* that the prophet's words constitute revelation and that the declared obligation is

a genuine revealed obligation. If someone comes to me and claims that he is a prophet and charges me to ponder the arguments with which he supports this claim, the very possibility that the claim may be true—a possibility that I cannot *prima facie* deny—places an obligation upon me to examine the arguments to determine if the claim be true. If the arguments prove that his claim is true, then I have been brought to the point of knowing that his words constitute a divine revelation and of learning from those words what further acts are required of me. If the arguments do not support his claim, then I may dismiss his claim to be a prophet, and I shall realize retrospectively that his placing me under an obligation to consider his arguments did not constitute a genuine revealed obligation. But no loss to me has occurred, for I have at least safeguarded myself against a divine sanction by ruling out the possibility that the obligation was genuine.

The uncompromising insistence of the orthodox upon the divine determination of all obligation no doubt reflects a concern for preserving the covenantal basis of the divine law. Although the idea of a divine covenant is not as prominent in the Islamic tradition as in the Judeo-Christian, it is nonetheless very much present.¹⁴ The Qur'ān speaks of divine covenants with human beings and for that reason alone, if for no other, Muslim thinkers were obliged to consider the subject. While Āmidī himself does not seem to touch directly upon it, he was surely familiar with the development of the covenant theme within the literature of commentary on the Qur'ān and thus may be presumed to have incorporated it into his thinking.

It could not have been otherwise for one standing, as Āmidī did, within the orthodox tradition. All obligations to which human beings were subject emerged out of a covenantal moment in which the human creature stood before God as subject before his sovereign, and God, acting in a manner befitting the superior party in a covenant between unequals, spelled out what the creature was to do and what would be the consequences both of compliance and of noncompliance. There could be no meaningful covenant between the human and his own intellect. Covenants are relational, and a relationship can exist only between two agents. The intellect cannot act as a genuine sovereign standing over the human, for it is a part of the human. The Mu'tazilī view lost sight of the essentially dynamic relational character of obligation. Obligation is meaningless if it is not something that exists between real parties. The spirit of Sinai lurks behind the orthodox view of obligation.

We may now turn to the second main topic that Āmidī discusses under the heading of *fiqh* postulates: the concept of a Shari'c categorization of an act (*al-hukm al-shar'i*). The discussion is divided into seven sections: an introduction in which Āmidī defines the concept followed by six sections in which

he deals with the six types of Shari'a categorizations, five of which entail the familiar categories: obligatory, recommended, neutral, disapproved, and forbidden.

Before offering his own definition of a Shari'a categorization, Āmidī examines three definitions of his predecessors, all of which he finds unsatisfactory for reasons he gives.¹⁵ A common thread, however, runs through these definitions: they all define the Shari'a categorization as a type of addressed speech (*khitāb*): categorization is thus, for all, *categorizing speech*. Since Āmidī adheres to this precedent in his own definition, he deems it necessary to offer a definition of addressed speech before proceeding to set forth his own definition of the Shari'a categorization. Addressed speech, he says, is "a vocal utterance [*lafz*] that has an established meaning and that is intended to communicate something to someone who is in a state of readiness for such communication."¹⁶ The phrase "that has an established meaning" is a free rendering of *al-mutāwada' ʿalayhi*, which is an allusion to a primordial assignment of verbal utterances to meanings, a subject we shall explore in the next chapter. It begins a narrowing down process. Speech is either mere babble or it is, as a result of a primordial event, laden with meaning. But not all meaningful speech is addressed speech. Muttering to oneself, for example, or talking in one's sleep are not. It is the intention to communicate that distinguishes addressed speech.

Āmidī here parts company with those who insisted that actual communication (*ifhām*) was essential to addressed speech. In his view, as long as the intention is present, the speech may be regarded as addressed, whether communication actually takes place or not. On the other hand, an intention to communicate cannot be said to be truly present unless there is a second party who is in a state of readiness for the communication. Without a second party, an intention to communicate is inane. One has the impression that the category of addressed speech embraces the whole of the divine speech revealed to the Prophet Muhammad, although room seems to be left for the possible existence of unrevealed nonaddressed divine speech.

With a definition of addressed speech in hand, Āmidī is able to offer a definition of the Shari'a categorization (*al-hukm al-shar'i*). It is "addressed speech of the Shari'a-giver that has a specifically Shari'a-related import."¹⁷ The Shari'a-giver (*al-shāriʿ*) is, of course, none other than the one from whom the Shari'a categorizations proceed: in the orthodox view, God. He is called "Shari'a-giver" here apparently in order to exclude from the definition a term—"categorizer" (*hākīm*)—that is related to the principle definiendum, "categorization" (*hukm*). On the other hand, the term "Shari'a-giver" (*al-shāriʿ*) is related to a second term within the definiendum ("Shari'a

categorization”)—“Sharīʿa” (used as an adjective, *sharīʿ*)—which suggests that Āmidī has not overcome circularity entirely. In fact, the definition (definiens) contains two cognates of “Sharīʿa”: “Sharīʿa-giver” (*al-shāriʿ*) and “Sharīʿa-related” (*sharīʿiyyatan*). The definition presupposes that we are able to identify something known as Sharīʿa before we know what a Sharīʿa categorization is. It is difficult to understand how this can be done.

Yet, if we look at the overall structure of thought underlying Āmidī’s definitions of addressed speech and the Sharīʿa categorization *together with* his explication of the six types of categorizations (which we shall consider presently), we shall, I think, see that there is no circularity in the system as a whole. The definition of the Sharīʿa categorization appears forward-looking in that it seems to anticipate the explication of the six types of categorization. That is to say, the notion of “Sharīʿa-related import,” which is part of the definiens of this definition, becomes clarified with the explication of the six types; we discover, in other words, that addressed speech has Sharīʿa-related import when it tells us that an act is obligatory, recommended, neutral, disapproved, or forbidden. Accordingly, addressed speech constitutes a Sharīʿa categorization when it conveys information of this kind, provided the addressed speech emanates from an authoritative source. For the addressed speech cannot be anyone’s speech. Rather, it can only be the speech of one who is in a position to determine which acts are obligatory, recommended, neutral, disapproved, and forbidden, that is to say, the Sharīʿa-giver (*al-shāriʿ*).

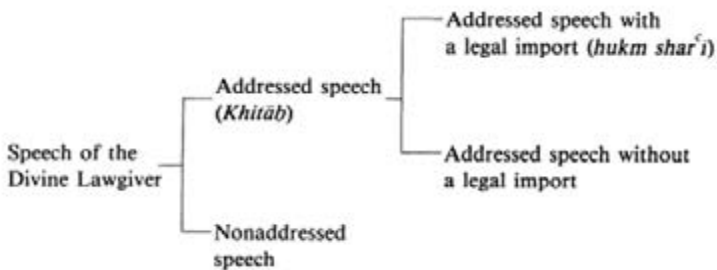
The eighteenth century lexicographer of the Islamic sciences, Muhammad al-Tahānawī, drawing upon comments of ʿAdud al-Dīn al-Ijī and Muhammad al-Jurjānī, notes an inconsistency between Āmidī’s definition of addressed speech and his definition of the Sharīʿa categorization.¹⁸ The former definition, by employing the phrase “vocal utterance,” places addressed speech within the realm of phonic speech as opposed to psychic or internal speech. However, in defining the Sharīʿa categorization as a type of addressed speech, Āmidī, according to Tahānawī, has in mind *internal* addressed speech. The distinction between phonic and internal speech (*al-kalām al-lisānī* and *al-kalām al-nafsi*), the latter of which embraced the realm of meaning, was universally accepted among Ashʿarīs. Not only was speech in general divided into these two categories; so was addressed speech in particular. Even addressed speech entailed the duality of vocal sound and meaning. There appears to have been a consensus among Ashʿarī thinkers to the effect that the Sharīʿa categorizations belong within the realm of meaning, of internal speech; that is to say, they belong within the realm of God’s eternal and uncreated speech.

This being the case, Āmidī could not define the Sharīʿa categorization as a type of addressed speech in the sense of *phonic* addressed speech. A divine

categorization is not to be identified *simpliciter* with words heard upon the tongue of the Prophet. The words—like all phonic speech—are the *expression* (or revelation) of something that is beyond the words. The location of the divine categorizations within the realm of meaning is presupposed by the very concept of “verbal” (i.e., vocal) indicators of these categorizations (*al-adilla al-lafziya li'l-ahkām*). For the words, far from constituting in themselves divine categorizations, signify, point to, those categorizations in the manner of all meaning-laden words.

Āmidī's definitions of addressed speech and of the Shari'a categorization presuppose the following classificatory scheme shown in figure 2.

Figure 2



Having defined the Shari'a categorization, Āmidī turns to the six types of categorizations. The first five of these are connected with categories that are already familiar to us: obligatory, recommended, neutral, disapproved, and forbidden. These terms are, of course, adjectives, the Arabic equivalents (as employed by Āmidī) being *wājib*, *mandūb*, *mubāh*, *makrūh*, and *mahzūr*. The categorizations as such are designated in Arabic by means of corresponding nouns: *wujūb* (less commonly, *ijāb*), *nadb*, *ibāha*, *karāha*, and *hazr*. These I shall translate into English as gerunds: rendering obligatory (or requiring),¹⁹ recommending, rendering neutral, disapproving, and forbidding. (Strictly speaking, it is *ijāb* rather than *wujūb* that should be translated as a gerund, the latter having the sense of “the state of being obligatory”; however, in actual usage *wujūb*, at least in the *Ihkām*, seems to be tantamount to *ijāb*. [See end-note 23.]) One could also render these terms as “the categorizing of an act as obligatory,” “the categorizing of an act as recommended,” and so on, but I shall here try to remain closer to the sense of the Arabic nouns. The sixth type of Shari'a categorization I have called, for want of a more suitable translation of its Arabic name (*al-hukm al-wad'i*), the nonnormative categorization.²⁰ It is a kind of catch-all category that includes a number of matters that we shall

consider later in this chapter. It stands apart from the first five, which constitute a distinct set commonly called *al-ahkām al-khamsa*, “the five [types of] categorizations.”

Āmidī’s definition, or explication, of the six categories amounts to a clarification of, or elaboration upon, the notion of “Shari‘a-related import” (*fā’ida shar‘īya*) contained within his definition of the Shari‘a categorization. To say that addressed speech has Shari‘a-related import is to say that it tells us something about human acts—that they are obligatory, recommended, neutral, disapproved, or prohibited or that they are valid, invalid, affected by extenuating circumstances, unaffected by extenuating circumstances, and so forth.

In embarking upon the task of explicating the six types of Shari‘a categorizations, Āmidī employs two different approaches: explication-through-disjunction (*taqsīm*) and formal definition (*hadd*). His explication-through-disjunction appears in the brief introductory section, following his general definition of the Shari‘a categorization.²¹ His formal definitions, on the other hand, appear at the beginning of the sections devoted to the types of Shari‘a categorizations. It may be noted here that of the two notions the Mu‘tazilīs, as will be recalled, used in their explication of the categories entailed in the categorization of acts—priority and blame—Āmidī retains the notion of blame, which he employs in his definitions, but drops the notion of priority altogether.

Āmidī’s explication-through-disjunction (that is to say, through either/or dichotomies) runs as follows. Any addressed speech that constitutes a Shari‘a categorization either calls for something or does not call for anything.²² If it calls for something, then that something is either the performance of an act or its nonperformance. If it calls for the performance of an act, it does so either in a peremptory manner or in a nonperemptory manner. If it does so in a peremptory manner, the categorization constitutes a *rendering obligatory*; if in a nonperemptory manner, then it constitutes a *recommending*. Similarly, if the addressed speech calls for the nonperformance of an act, it does so either in a peremptory manner or in a nonperemptory manner. If in a peremptory manner, the categorization involved constitutes a *forbidding*; if in a nonperemptory manner, it constitutes a *disapproving*.

If the addressed speech does not call for anything, whether the performance of an act or its nonperformance, then either it allows the addressee to choose between performance or nonperformance or it has no bearing whatsoever on the question of the performance or nonperformance of acts. If it allows a choice, the categorization constitutes a *rendering neutral*. If the addressed speech is not concerned in any way with the question of whether an act is to be performed or not, then the categorization constitutes a nonnormative categorization (*al-hukm al-wad‘ī*). This last type of Shari‘a

categorization is obviously a residual category, embracing a number of types of nonnormative categorizations that will be considered presently.

Āmidī's classificatory scheme may be presented diagrammatically as shown in figure 3.

Āmidī's other approach to the explication of the types of Shari'a categorizations, as I have said, employs the notion of blame and thus gives rise to a schema resembling that of the Mu'tazilis, noted earlier, while differing from it in important respects. Since Āmidī's formal definitions of the five categories occur at different points in his discussion of the categories, not all together, they are not closely coordinated. In one instance the definiendum is a verbal noun representing the categorization itself (*wujūb*, "rendering obligatory"), in three instances it is an adjective (or, as students of Arabic might prefer to call it, a passive participle) representing the category under which an act falls as a result of the categorization (*mandūb*, "recommended"; *makrūh*, "disapproved"; and *mubāh*, "neutral"), and in one instance it is both a verbal noun and a corresponding adjective (*hazr*, "forbidding"; *mahzūr*, "forbidden"), resulting in two separate definitions. One presumes that Āmidī, had he felt the need to do so, could have consistently chosen one definiendum or the other or included both, as in the case of *hazr* and *mahzūr*. As they stand, the definitions are as follows:

1. "Rendering obligatory" (*wujūb*²³) designates the addressed speech of the Shari'a-giver as it relates to acts whose nonperformance is, under the terms of the Shari'a (*shar'an*), a ground for blame in a certain situation (*fī hālātim mā*).²⁴ The phrase "in a certain situation" will be explained presently.)

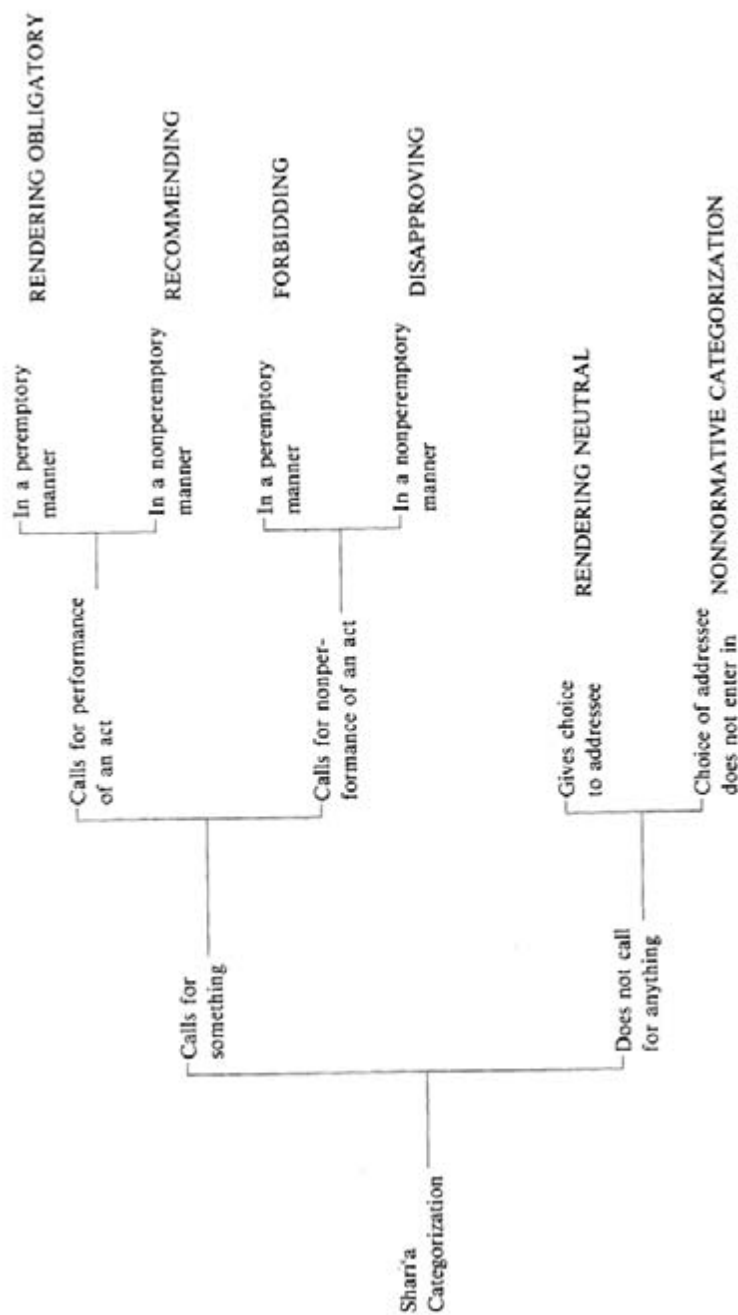
2a. "Forbidding" (*hazr*) designates addressed speech of the Shari'a-giver as it relates to acts whose actual performance (as opposed to a consequence following therefrom) is, under the terms of the Shari'a, a ground for blame in a certain respect (*bi-wajhim mā*).²⁵ (The phrase "in a certain respect," which also appears in the definition of the "forbidden," will be explained presently.)

2b. The "forbidden" (*mahzūr*) is the act whose actual performance becomes under the terms of the Shari'a the ground for blame in a certain respect.²⁶

3. The "recommended" (*mandūb*) is the act whose performance is called for under the terms of the Shari'a without there being any blame whatsoever in the event of its nonperformance.²⁷

4. The "disapproved" (*makrūh*) may be one of four things, according to usage: (a) that which is forbidden (*harām*);²⁸ (b) the nonperformance of that which is likely to be beneficial, but the neglect of which is not actually forbidden (for example, the nonperformance of a recommended act); (c) that which is prohibited, not in the sense that it is (absolutely) forbidden

Figure 3



but in the sense that it is to be eschewed;²⁹ and (d) that for which an aversion is felt even though it is thought to be in all probability permissible.³⁰ (Quite obviously it is the third of these usages that is most germane to Āmidī's own schema.)

5. The "neutral" (*mubāh*) is that for which there is a transmitted indicator of addressed speech of the Shari'a-giver that allows one to choose whether to perform it or not to perform it without prescribing any specific alternatives.³¹

It will be noted that where the definiendum is a verbal noun representing the categorization itself ("rendering obligatory," "forbidding"), as opposed to an adjective pertaining to the categorized act, the first element in the definiens is "addressed speech of the Shari'a-giver." Presumably, if the definiendum in all the definitions were the categorization itself, they would all have this in their definiens. In fact, the expression "addressed speech of the Shari'a-giver" does appear within the definition of "neutral." Therefore, it may be said that three of the definitions incorporate the notion of addressed speech of the Shari'a-giver explicitly, while the other two incorporate it implicitly. This pivotal position of the notion within the definitions reflects the orthodox aversion to the attribution of Shari'a categorizations to the human intellect. These categorizations are, in the orthodox view, all embedded in divine speech addressed to the human creature in a covenantal setting. Apart from this divine speech, there are no such categorizations.

It will also be noted that the notion of blame that is utilized in these definitions is restricted to blame that arises under the terms of the Shari'a. There is a strong suggestion here that genuine blame can emanate only from the Shari'a-giver, the superior party in the covenantal relationship; the intellect does not generate blame on its own. If blame is the criterion for distinguishing one type of categorization embedded entirely in the divine speech from the others, the blame itself must presumably be embedded in that speech. Rational blame of the sort conceived by the Mu'tazilis is implicitly ruled out.

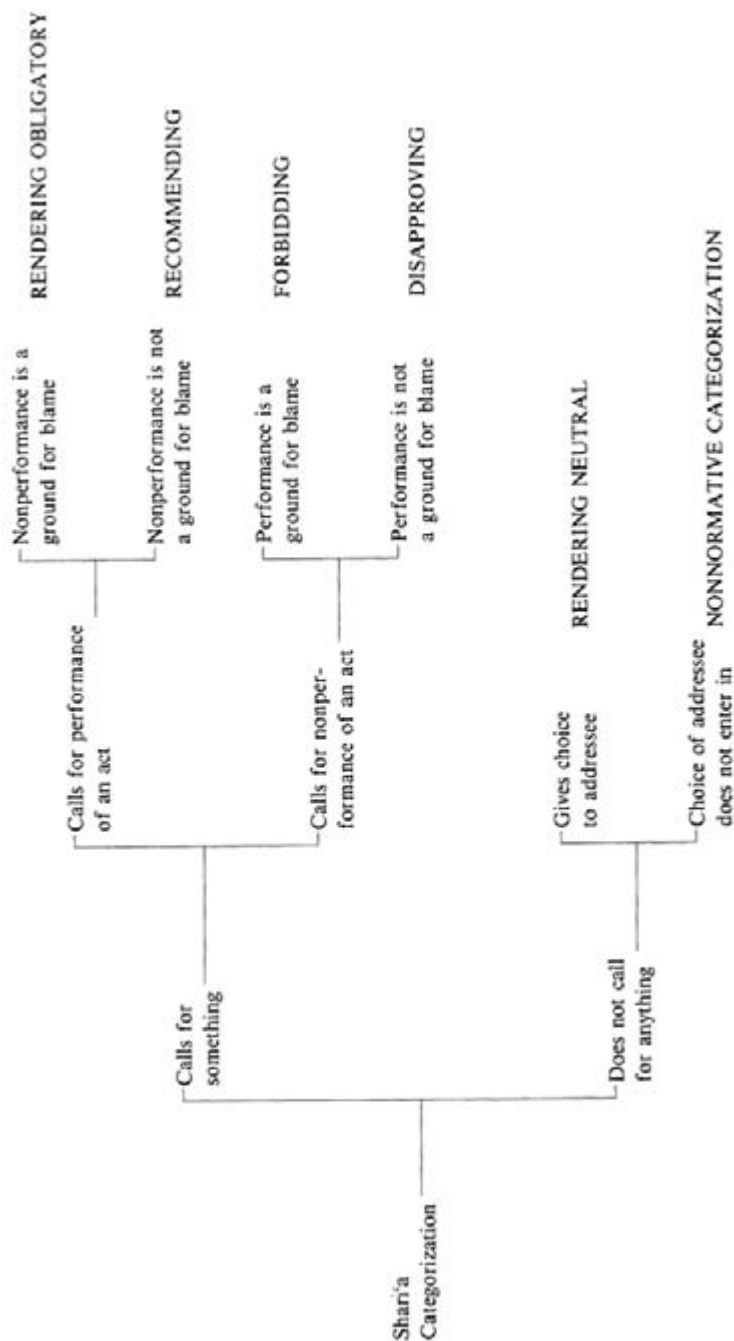
The phrases "in a certain situation" and "in a certain respect," which appear in the definitions of rendering obligatory and forbidding, demand special comment. These phrases are meant to take into account special types of rendering obligatory and forbidding: rendering obligatory that calls for the performance, not of a particular act, but of any one of a number of designated acts; forbidding that calls for just the reverse—the nonperformance of any one of a number of designated acts; and rendering obligatory that calls for the performance of a particular act, not at a specific time, but at any time within a designated time-span. Acts subject to these types of rendering obligatory and forbidding are called in Arabic *al-wājib al-mukhayyar*, *al-mahzūr*

al-mukhayyar, and *al-wājib al-muwassaʿ*.³² I shall, for want of more precise English renderings, speak of “option-bound obligation,” “option-bound forbidding,” and “extended obligation.” An example of option-bound obligation is the obligation relating to expiation for breaking an oath. Since several alternate methods of expiation (feeding or clothing ten needy persons, freeing a slave or fasting for three days; see Qurʾān 5:89) are designated, one is able to exercise a degree of choice in the fulfillment of the obligation. An example of extended obligation is that relating to ritual prayer (*ṣalāh*), which may be performed at any time within a designated time-span.

In view of these types of rendering obligatory and forbidding, one cannot, in the case of rendering obligatory, say without qualification that the nonperformance of the act in question is a ground for blame or, in the case of forbidding, that the performance of the act is a ground for blame. In the case of the option-bound obligation, one may fail to perform any one of the acts designated and yet not be blameworthy, provided one has performed another of those acts. For example, one who has broken an oath is not blameworthy for his failure to free a slave if he has fed ten needy persons. Such blameworthiness arises only “in a certain situation,” namely when the person concerned has not performed any of the alternative expiatory acts. I am thus blameworthy for not freeing a slave in a situation of my likewise not having fed or clothed ten needy persons or fasted for three days. Each one of these is an option-bound obligation such that blame for the nonperformance of *any one* of them arises in the situation of my not having exercised the option granted to me, that is to say, of my not having performed any of the alternatives. Similarly, if I fail to perform the midday prayer at the beginning of the period during which it is to be performed, I am blameworthy only “in a certain respect,” that is to say, only in respect to my not performing the prayer within the remaining moments of the designated time-span. If I have performed the prayer at some later moment within that time-span, then I am not to blame for having not performed the prayer in any of the other moments within the time-span.

The application of this principle to the option-bound forbidding can be readily inferred by the reader. Where rendering obligatory and forbidding allow neither a choice between designated alternatives nor an extension through time, the phrases “in a certain situation” and “in a certain respect” may, it seems, be taken to mean “in the event no choice between alternatives or extension through time is entailed.” The qualification still remains necessary. It may be noted in passing that, while recommending and disapproving could theoretically entail these same considerations, in fact they seem not to, since there is no discussion of such matters in connection with them.

Figure 4



We may extrapolate from Āmidī's definitions of the five types of Shari'a categorizations (he does not define the sixth, the nonnormative categorization) a typological schema, as shown in figure 4.

On comparing figure 4 with figure 3, one sees that the two may be easily combined into a single schema by juxtaposing criteria relating to blame with criteria relating to the manner in which the performance or nonperformance of an act is called for. For example, a categorization of an act that calls for the performance of an act in a peremptory manner with the result that blame arises in the event of nonperformance constitutes a rendering obligatory. There was no doubt in Āmidī's thinking a kinship between the notion of calling for something in a peremptory manner and the notion of blame. Calling for the performance of an act in a peremptory manner may have been tantamount, for Āmidī, to assigning blame in the event of nonperformance. If this is the case, then the combination of criteria results in a degree of superfluity.

We may perhaps add further clarity to Āmidī's explication of the Shari'a categories by arranging the four that entail the notion of calling for something (*talab*) into the following square shown in figure 5.

Figure 5

	Performance is:	Nonperformance is:
Called for in a peremptory manner	OBLIGATORY	FORBIDDEN
Called for in a nonperemptory manner	RECOMMENDED	DISAPPROVED

	Nonperformance is:	Performance is:
A ground for blame	OBLIGATORY	FORBIDDEN
Not a ground for blame	RECOMMENDED	DISAPPROVED

Thus far in this discussion of the Shari'a categorizations I have made no reference to law but have spoken simply of the Shari'a. It is now time to have

a closer look at the strictly legal aspect of our subject. In the introduction I suggested that of the five types of Shari'a categorizations two—the categorization of acts as obligatory and the categorization of acts as forbidden (or, in the terminology of the present chapter, “rendering obligatory” and “forbidding”)—have a duality about them: they constitute both law and morality.³³ The law side of this equation, as I said, hinges upon the relevance of these two types of categorizations to an actual judicial process embedded within the machinery of the state, while the morality side hinges upon their relevance to the proceedings that will take place on the Day of Final Reckoning. I suggested that from a strictly legal (i.e., judicial) point of view all acts that are not obligatory or forbidden have a kind of neutrality about them, even though there is no term in Arabic for this neutrality.

Muslim legal thought is so intertwined with ethical thought that the system of classification developed in the science that bore the name of *usūl al-fiqh* simply did not provide for a strictly legal neutrality. The ethical dimension of Muslim thinking required five categories, not three, and such neutrality as did arise makes sense only in ethical terms. A judge trying to reach a decision on a case brought before him has no interest *as a judge* in the distinction between recommended, disapproved, and morally neutral acts. Therefore, the categorization of acts as recommended, disapproved, or morally neutral is not characterized by the law/morality dualism that is so evident in the case of the categorization of acts as obligatory or forbidden.

Looking at the law side of these latter two types of Shari'a categorizations, we can see, I think, a peculiarly legal significance in the Arabic term *dhamm*, which is a crucial element in their definition and which I have in the preceding pages translated as “blame.” Blame belongs much more to the vocabulary of moralists than to the vocabulary of law. *Black's Law Dictionary* does not even provide an entry for it. It does, on the other hand, provide an entry for a related word, “culpability,” which it defines as “blameworthiness.” Thus while “blame” may be allowable within the field of law, we shall give *dhamm* a more clearly legal flavor if we render it as “holding culpable.” Culpability, in judicial terms, entails liability to punishment or to remedial measures stipulated under the law. There is therefore also in the word *dhamm* the sense of “to hold liable”; the cognate word *dhimma*, it may be noted, has the clear sense of liability. The liability here under consideration, however, is strictly liability to punishment or to a remedial measure enforceable through a threat of punishment.

I find it striking that Āmidī does not make use of the concept of praise or entitlement to reward in his definitions of the types of Shari'a categorizations. He seems to stand in a tradition in which these concepts were not used,

a tradition going back to the Muʿtazilīs. The use of these concepts in the definition of the types of Shariʿa categorizations is not unknown among Muslim authors, though it seems to have been uncommon. Why do the majority of authors focus upon “blame” or (to employ, in line with my suggestion, a more typically legal term) “culpability”? It seems to me that this betrays a strong legal bent on the part of these authors. While I do not wish to minimize their interest in morality and in the hereafter, it seems to me that the greater preoccupation with culpability and punishment than with praise and reward reflects a concern to make their work relevant to the exigencies of law in the here and now. The great thinkers of medieval Islam were more than mere moralists, though they were certainly that: beginning with the Muʿtazilīs and those who preceded them, they were as much concerned with the promotion of an Islamic order on this earth through the agency of an Islamic state as they were with making a good showing on the Day of Final Reckoning. The concepts of culpability and punishment, of course, have great relevance to morality and to the proceedings of that day, but the concepts of praise and reward, I should think, have even greater relevance. The moral life is a movement upward toward perfection and is thus much more undergirded by anticipations of praise and reward than by the mere desire to escape the fire of Hell. On the other hand, the language of culpability and punishment, while meeting at least the minimal demands of systematic thinking about the moral life, serves the needs of legal thought especially well.

But, it may be asked, are all categorizations of acts as obligatory or forbidden relevant to both of the tribunals in whose shadows the Muslim lives, the one of this world and the one of the hereafter? Are there not some that are relevant to the other-worldly tribunal alone, especially in the area of private worship and piety? It would certainly seem so. On the other hand, there is no clear-cut line drawn between what the Islamic state is expected to enforce and what it is not. Historically, the states that have claimed to be Islamic have left much unenforced, but this fact does not argue for the Islamic state’s not having the competence, in theory, to enforce these neglected matters. In principle, the state may enforce much that historically has not been enforced, even in the realm of worship and piety.

It is instructive to consider how human freedom of action fares within the framework of the law side of the Shariʿa categorizations as against the morality side. From the standpoint of the law and of the state that supplies the sanctions for its enforcement, an individual has unrestricted freedom in the domain of acts that are not obligatory or forbidden. Within this domain the state cannot interfere. The categorization of acts as obligatory or forbidden, on the other hand, by its very nature places restrictions on human freedom; yet we have

noted that where rendering obligatory and forbidding are option-bound or obligation is extended over time the individual is given a limited freedom of choice: he has a limited number of alternatives from which to choose.

Beyond the domain of obligatory and forbidden acts morality alone is operative as a restricting factor. But its restrictive role is a qualified one. The recommending and disapproving of acts allow a degree of freedom of choice insofar as no blame arises if one's choice is contrary to what is called for. Only the imputation of blame, with the attendant threat of punishment, constitutes an absolute refusal of freedom of choice. If a certain act is recommended to me and I am assured that I shall not be pronounced blameworthy or culpable if I decline to perform the act, then I may reasonably consider myself at liberty to decline. However, since an act has definitely been called for, I shall hardly regard my freedom of choice as entirely unrestricted. I am free to choose in the sense that I am unhampered by any concern with incurring blame; I am not free in the sense that I may regard my performing or not performing the act as a matter of complete indifference. Only morally neutral acts entail an unqualified freedom devoid of considerations of blame and of something called for.

It should at this point be clearer why, as was suggested in the introduction,³⁴ only the categorizations of acts as obligatory or forbidden deserve to be called rules. In ordinary English usage, a rule is something that tells me what I must do, must not do, or may do. Rules define the limits of my behavior, the sphere in which I may make free choices as to how I will conduct myself and the sphere in which I may not make free choices. Whether these limits are something I voluntarily submit to, as when I elect to join a club, or something imposed upon me by an external authority such as a government is immaterial. Rules are rules primarily by virtue of their limiting, controlling function. This being the case, one can quite comfortably speak of categorizations of acts as obligatory or forbidden as rules, since these are clearly designed to control conduct. One can hardly as comfortably speak of the other categorizations as rules. The categorizations of acts as recommended or disapproved, as I have suggested, should be regarded as exhortations rather than rules.

Among the topics included in Āmidī's disputational agenda that relate to the five normative categories (obligatory, recommended, neutral, disapproved, and forbidden), the most noteworthy for our purposes have to do with the relationship between these categories and two related categories that are of fundamental importance in Islamic theology and jurisprudence, designated by means of the Arabic terms *amr* and *taklif*. The term *amr* is most commonly translated as "command." This rendering is acceptable only

if we assign to the English word “command” a somewhat weaker sense than in normal, everyday usage. The question that the Muslim dialecticians raised was whether recommended and neutral acts may be considered to be commanded (*ma’mūr bihi*), it being unanimously agreed that obligatory acts were commanded. The most widely accepted view, according to Āmidī’s account,³⁵ was that recommended acts belong within the category of commanded acts but neutral acts do not. Quite obviously, if a recommended act may be regarded as commanded, then “commanded” has a sense weaker than its ordinary one. English speakers do not ordinarily speak of recommendations as commands. The argument for including recommended acts under the heading of commanded acts was that the performance of such acts constituted obedience, according to the general consensus, and obedience consists precisely in compliance with a command; therefore, recommended acts are commanded.

The argument for excluding neutral acts, on the other hand, was that if neutral acts were commanded they would not be neutral, in the true sense, since the categories of neutral and commanded were mutually exclusive. This being the case, the inclusion of neutral acts within the category of commanded acts amounted to an elimination of the category of neutral acts altogether and the reduction of the number of normative categories from five to four, which was contrary to consensus.

In the case of disapproved acts, the problem had to do, not with the category of *amr* as such, but with its corollary, the category of *nahy*, for which the usual translation is “prohibition.” Here again we may employ the common translation only if we weaken the sense of an English word, for the majority of Muslim theorists leaned to the view that the disapproving of an act was, as much as the outright forbidding of an act, a kind of *nahy*.³⁶ To the extent that we consistently translate *nahy* as “prohibiting” and *hazr* as “forbidding,” we are forced into the awkward position of having to weaken the sense of the former English word while retaining its normal synonym in full strength. (To avoid this problem I argue in Part II, chapter 7, for translating *nahy* as “negative command.”)

This weakening of the normal sense of words is true of the Arabic terms *amr* and *nahy* themselves, and the Muslim theorists who advocated this weakening may well have felt some uneasiness at the level of actual usage. To treat something as *nahy* while excluding it from the category of *hazr* or *tahrīm* is something of a disturbance of normal usage. The same is true with respect to *amr* and *ijāb*, “rendering obligatory.”

From the standpoint of legal theory, this weakening of the sense of “command” has the effect of preventing the establishment of a correlation between

commands, on the one hand, and law, on the other. Since a command may betoken the presence of either an obligation or a recommendation and since law embraces only the former, the command cannot be regarded as unambiguously betokening the presence of law. Any theory of law that links law with the commands of a sovereign will thus not work within the framework of this diluted sense of "command."

The term *taklif* designates the act of charging someone with something, of making someone responsible for something. The individual upon whom such a charge is laid is said to be *mukallaf*, "charged," "made responsible"; the charge—the performance or nonperformance of a given act—is said to be *mukallaf bihi*, "that with which one is charged," "that for which one is made responsible." Here the English renderings "charging" and "making responsible" may be taken in their full force, in contrast to the case of "command." For the majority of Muslim scholars, only obligatory and forbidden acts could be properly considered as entailing a charge and as rendering the individual responsible: in the case of obligatory acts one was charged with the performance of an act, in the case of forbidden acts with the nonperformance of an act. The argument for excluding recommended, disapproved, and neutral acts from the category of acts that entail a charge was that one could properly speak of a charge only where the freedom of the individual had been limited in a truly onerous manner. Neutral acts entailed no limitation of freedom at all. In the case of recommended and disapproved acts there was a degree of limitation of freedom but not such as to constitute a genuine onus (*kulfa*). Since one could choose nonperformance of a recommended act or performance of a disapproved act without incurring blame, one had no reason to consider oneself under an onus: a measure of freedom had been retained. Only where the prospect of blame was present and freedom of choice had in consequence been either completely negated or, in the case of option-bound and extended obligation or forbiddenness, for the most part negated could one properly consider oneself to be under a charge and responsible.³⁷

Those Muslim theorists who insisted upon tying the concept of *taklif* to obligatory and forbidden acts were clearly in effect giving the concept special relevance to law. It is curious that while Muslim thought tended to deprive the concept of the command of any special relevance to law it did not hesitate to give such relevance to the concept of charging. A command is thus not necessarily a charging, a making responsible: many commands do not impose a *kulfa* (burden) in the sense defined above upon the one commanded. The association between *taklif* and law gives the cognate term *mukallaf* the sense of "one subject to the law," from which the more rarified sense of "legally competent person," which one encounters in Western writings on Islamic

law, derives. It must be kept in mind, of course, that the linking of *taklif* to categorizations of acts as obligatory and forbidden does not remove *taklif* from the sphere of morality but rather places it within the part of the Shari'a that is marked by the law/morality dualism I spoke of earlier.³⁸ *Taklif* retains its relevance to the Day of Final Reckoning, but along with this it also has a special relevance to the this-worldly judicial process, and it is this latter relevance that constitutes, as I have said, the criterion of law.

We may now turn briefly to the sixth type of Shari'a categorization, the nonnormative categorization (*al-hukm al-wad'i*).³⁹ In the introduction we noted that this type includes the categorization of acts as valid or invalid and the categorization of acts as affected or unaffected by extenuating circumstances ("affected" in regard to a previously established categorization).⁴⁰ Āmidī notes that Abū Hanīfa added to the categories "valid" and "invalid" a third category, "defective" (*fāsid*). This additional category included acts (transactions) that, while meeting certain fundamental conditions of validity, failed to meet all the conditions required for full validity. Such acts were thus valid to a limited extent: they produced certain legal effects while not producing others. A good example is the marriage of a Muslim man to a non-Muslim woman: such a marriage produces legitimacy of sexual union and offspring, for example, but not a right of the wife to inherit property. Āmidī tells us that he and his fellow schoolmen regarded the term "defective" as synonymous with the term "invalid." In other words, they rejected the distinctness of "defective" as a third category.

In addition, the nonnormative categorization includes a third subset that I did not mention in the introduction, since categorizations belonging to this subset are not so much categorizations of acts as much as categorizations of aspects of acts. The operative Arabic term is *wasf* (pl. *awsāf*), "feature," "characteristic." Every act is a complex of features and may be analyzed into those features. A feature of an act is subject to categorization with a framework of three basic categories. These are designated in Arabic as *sabab* (or *'illa*), *māni'* and *shart*. The first of these terms will occupy a place of special importance later in this book (Part II, chapters twelve and thirteen). I shall translate it, for reasons to be given later, as "occasioning factor," meaning the factor that occasions a Shari'a categorization of an act. An example that will become prominent in the later discussion is the drinking of *khamr* (grape-wine). The Shari'a categorizes this act as forbidden. Like all acts, it can be analyzed into a number of discrete features, one of which is that it induces drunkenness. Since this feature constitutes, according to virtually all Muslim jurists, the occasioning factor behind the categorization of this act as forbidden, we may speak of the feature itself as categorized as an occasioning factor. But a feature

of an act may have the opposite function: it may prevent the act from being categorized in a certain way. In this case the feature is categorized as an obstacle (*māniʿ*) to categorization. Finally, a feature of an act may be essential to the act's validity, in which case it is categorized as a condition (*shart*) of validity. For example, the state of ritual purity is a feature of the *salāh*-prayer apart from which no performance of the prayer can be valid.

That features (*awsāf*) categorized in these three ways are features of acts is fairly clear from Āmidī's discussion. On the other hand, these same features appear later in the *Ihkām* as features of objects.⁴¹ The capacity to intoxicate, for example, is treated as a feature of *khamr*, not as a feature of *khamr*-drinking. This is not to say, however, that a feature of this sort may ever be treated *merely* as a feature of an object. Objects are of interest only insofar as they are involved in human acts. If *khamr* were not a beverage that some human beings drink, it would be of no interest whatsoever. Any feature of *khamr* that occasions a categorization of *khamr*-drinking as forbidden is, in effect, a feature of *khamr*-drinking itself. Or, to use terms which we shall employ later, it is a feature of the case.

Āmidī's treatment of the two remaining factors present in every Shariʿa categorization, the act categorized and the agent performing the act,⁴² is much briefer than his treatment of the factors thus far considered. His chief concern at this point is with the concept of *taklīf* (charging, making responsible). That is to say, he is concerned primarily with the question of what sorts of acts may be—are capable of being—*mukallaf bihā* (the object of a charge) and with the question of what sorts of agents may be *mukallaf* (under a charge, responsible). As noted previously, only rendering obligatory and forbidding entail a charge. The former of these two questions is, therefore, a question of what sorts of acts may be obligatory and forbidden, and the latter is a question of what sorts of agents may be subject to obligating and forbidding. No questions related to recommending, disapproving, or rendering neutral arise in this discussion.

In speaking of acts as *mukallaf bihā*, Āmidī seems to be using the word "acts" (*afʿāl*) in a broader sense than is intended in speaking of acts as obligatory or forbidden. When one speaks of acts as obligatory or forbidden, one juxtaposes in one's mind *fiʿl* and *tark al-fiʿl*. I have translated these in previous pages as "the performance of an act" and "the nonperformance of an act." Strictly speaking, *fiʿl* means simply "act" (although Āmidī occasionally employs the expression *fiʿl al-fiʿl*). If we omit the phrase "performance of," then we must speak of obligation as entailing a charging of the individual with an act and of forbidding as entailing a charging of the individual with the nonperformance (*tark*: "leaving," "forgoing") of an act. It

would therefore seem inappropriate to speak of a forbidding as entailing a *taklif bi'l-fi'l* (charging with an act) and to use *al-af'āl al-mukallaf bihā* as a general heading. Should Āmidī not include the two categories of *al-fi'l al-mukallaf bihi* and *tark al-fi'l al-mukallaf bihi* (or, to remove the ambiguity of the *idāfa*: *al-tark al-mukallaf bihi li'l-fi'l*)? The reason he does not feel constrained to do this is that *tark al-fi'l*, the nonperformance of an act, is itself an act in its own right.

That *tark al-fi'l* must be considered an act in its own right is made clear in Āmidī's discussion of the question whether it is possible for a nonact (*'adam al-fi'l*)—that is to say, the complete absence of an act of any kind—to be the object of a charge. The Mu'tazilī Abū Hāshim maintained that when God charges his creatures not to perform a particular act he does not necessarily do so with a view to getting them to perform some act that is the contrary of the act not to be performed; he is, in other words, charging the creature with a nonact pure and simple.

The majority of speculative theologians, both Ash'arī and Mu'tazilī, disagreed with Abū Hāshim, arguing that his position leads to an unacceptable conclusion. Compliance with a divine charge constitutes obedience, they maintained, and obedience to God is subject to reward. If Abū Hāshim's position is correct, it follows that a pure nonact is subject to reward, inasmuch as it represents complete compliance with a divine charge and therefore obedience. But this conclusion is contrary to the Qur'an, which speaks only of reward for acts and says, "A man shall have to his account only as he has laboured" (53:39). Therefore we must hold that when God charges the creature not to perform a certain act he is by virtue of that very charge charging the creature to perform some act which is the contrary of that act. To charge someone not to run is to charge that person to do something that is a contrary of running, whether it be walking, standing still, or some similar act. We may perhaps regard refraining from an act as itself an act, the act of refraining. Āmidī in fact uses the expression *kaff al-nafs 'an al-fi'l* "holding oneself back from an act" to describe the nonperformance of an act in respect to its character as an act in its own right. By including *tark al-fi'l* along with *fi'l* under the heading of *af'āl* and by making *af'āl* in this broader sense the object of the act of charging, Muslim jurists were able to treat the idea of a charge as something common to both rendering obligatory and forbidding, something that linked these two categorizations of acts together.

Among the several questions that Āmidī subsumes under the larger question of what sorts of acts may be *mukallaf bihā*, the one to which he devotes the greatest amount of attention is the question of whether acts that are impossible for an agent may be *mukallaf bihā*.⁴³ It was customary for the

majority of Ash'arīs to insist categorically that God is at full liberty to charge his creatures with impossible acts and to hold them responsible for performing them; to say otherwise seemed tantamount to restricting the divine freedom. In working out his own position on this question, Āmidī begins by drawing a distinction between acts that are intrinsically impossible and acts that are impossible by virtue of something other than the acts themselves, in other words, acts that are extrinsically impossible.

As an example of the first category, we may take a man who is standing in the middle of a field under cultivation. If he remains where he is, he will interfere with the cultivation. But if he leaves the field, he will in that case again interfere with the cultivation, presumably by trampling on seed or on freshly cultivated soil. Yet he cannot refrain *both* from remaining where he is and from leaving the field, for this amounts to simultaneously performing contrary acts, which is intrinsically impossible. Most Ash'arīs and even some Mu'tazilis maintained that it was quite possible for God to forbid a man in such a situation both to remain where he is and to leave the field. God would in this case be charging a creature with something intrinsically impossible.

Āmidī takes strong exception to this way of thinking. To charge someone with something, he argues, is to call for (*talab*) something onerous (a point mentioned earlier⁴⁴). Now, the act of calling for something presupposes that the thing called for is conceivable. Anything that is intrinsically impossible, such as the simultaneous performance of contraries, is beyond conception and therefore cannot be called for. Hence, the notion that God may charge the creature with the intrinsically impossible must be rejected. Quite the opposite is true with regard to acts that are extrinsically impossible for the creature. Āmidī gives the example of God's charging with belief those he knew would not believe. In this case, an act—that of believing—is impossible for the creature, not intrinsically since it is perfectly conceivable for creatures to believe, but by virtue of something extrinsic to the act of believing, namely, God's foreknowledge. One could add, drawing from Āmidī's own theological perspective, that to say God knows that a certain individual will not believe upon being charged with belief is to say that God does not will ever to create in the individual the ability to believe and that the individual will therefore remain forever unable to believe. Āmidī is thus able, despite his qualms over the notion of God's charging the creature with the intrinsically impossible, to remain faithful, with respect to extrinsically impossible things, to the Ash'arī dictum that God may charge the creature with that which lies beyond the creature's capacity (*al-taklīf bimā lā yutāq*).

The discussion of the question of what sorts of agents may be *mukallaf* focuses on six categories of agents: non-Muslims, the mentally incapacitated,

minors, nonexistent persons, persons acting by mistake, and persons acting under duress.⁴⁵ With respect to non-Muslims, the opinion of the majority, both Ashʿarī and Muʿtazilī, is, according to Āmidī, that they are indeed under a charge to perform acts that are obligatory under the Islamic Sharīʿa and to refrain from performing acts that are forbidden. If it is objected that many obligatory acts can be satisfactorily performed only by believers, the answer is that non-Muslims are under a charge to meet the condition of belief. The responsibility to comply with the Islamic Sharīʿa in all its parts, meeting whatever conditions are necessary, is thus universal.

With respect to the mentally incapacitated and minors, the generally accepted opinion is that they may not be under a charge since that state requires a knowledge of the Sharīʿa of which they are incapable. Āmidī does note, however, that those who accept the principle that individuals may be charged with the impossible take the opposite point of view, although he does not indicate whether he is speaking of those who include under “impossible” the intrinsically impossible or those who restrict this principle to the extrinsically impossible (see above), among whom he himself is to be counted. In any case, it is important to bear in mind that the opinion in question is that the mentally incapacitated and minors *may* be under a charge, not that they are in fact under a charge. The issue relates to what is theoretically possible; as for what is in fact the case, this presumably is to be determined on the basis of revelation. Āmidī finds support for the majority position in the Prophet saying, “The pen is held back from three persons: the youth until he reaches the age of majority, the sleeper until he awakes, and the mentally incapacitated until he attains soundness of mind.”

In the discussion of the next category of agents in question—that of nonexistent persons—we find that a third opinion with respect to the mentally incapacitated and minors was entertained among Muslims. In this discussion the question arises whether a divine charge should be regarded as eternal or as arising at a point in time. The Ashʿarī position, according to Āmidī, was that a divine charge is eternal since it is linked to an eternal calling for (*talab*) something. The notion of an eternal calling for something did not present a problem for the Ashʿarīs since their theology allowed them to regard this calling for something as rooted in a divine attribute, that of speech, which was understood to subsist through the divine essence.

The subject of divine speech has already been considered.⁴⁶ Here the point to be noted is that, since a charge necessarily relates to an agent, someone who is placed under the charge, the Ashʿarī theologians deemed it necessary to regard creatures as under a charge before they existed. This is not to say that they were charged to perform the acts in question before they existed,

a clear impossibility, but that the state of being under a charge to perform the acts subsequent to coming into existence preceded their existence. The divine charge thus contained a qualification: individuals are eternally charged to perform (or to refrain from performing) such-and-such acts at such time as they come into existence. This way of thinking could then easily incorporate further qualifications: individuals are eternally charged to perform such-and-such acts at such time as they, having come into existence, reach the age of majority or attain soundness of mind. Given this qualification, mentally incapacitated persons and minors could be said to be under a charge while in the state of being mentally incapacitated or minors, although what they are charged with was understood to be the performance of certain acts at such time as they ceased to be in that state.

With respect to persons who have mistaken notions as to what is obligatory or forbidden, Āmidī records a consensus to the effect that such persons are not under a charge to perform the genuinely (but unbeknownst to them) obligatory act or to refrain from performing the genuinely forbidden act (as opposed to acts mistakenly supposed to be obligatory or forbidden). By contrast, the situation pertaining to persons who are constrained under duress to perform certain acts is a matter on which opinion is divided. Āmidī leans to the view that if the duress has been so severe as to make the act in question tantamount to an involuntary act on the order of trembling from a fever then the agent may not be under a charge either to perform or to refrain from performing it. The agent is, in other words, not responsible for his action.

THE LUGHA-RELATED POSTULATES

Although the theological and *fiqh* postulates of the science of theoretical jurisprudence bring one near indeed to the point where one may consider oneself ready to venture directly into that science, they do not represent the whole of what must be known before that venture may begin. There remains another subject about which certain things must be known—the language of the texts upon the basis of which mujtahids seek to articulate the divine categorizations, the texts that contain or engender the indicators of those categorizations. For Muslims, this language is Arabic and the requisite linguistic knowledge must be derived from the “science of Arabic” (*‘ilm al-‘arabīya*) or, as it is more frequently called, the “science of the Lughā” (*‘ilm al-lughā*). This science represents the last of the three sciences upon which theoretical jurisprudence is dependent.

I shall in these pages speak of “the Lughā” rather than of “language,” since the term *lughā* conjured up images in the mind of the medieval Muslims that are somewhat different from those that the term “language” brings to the mind of the average speaker of English. The Lughā was essentially a body of conventionally established correlations between vocal sounds and meanings that remained constant over time—in other words, a firmly fixed and stable lexical code. It was, of course, the Arabic lexical code that Muslim jurists had in mind when they spoke of the Lughā, although the term *lughā* could refer to other lexical codes as well. What is distinctive about medieval Muslim thinking about the Lughā is its outlook on the Lughā’s origin and preservation over time. As we shall soon see, the idea of the Lughā had strong links with the idea of *sunna*.

The dependency of theoretical jurisprudence upon the science of the Lughā arises, Āmidī tells us, from the fact that the knowledge of what “verbal indicators” mean depends upon a knowledge of the meanings to which these indicators have been assigned as items within the Lughā, the *mawdū‘āt* of the indicators.¹ Verbal indicators are, of course, indicators that consist of words,

the words of which texts are made. They thus correspond to what I earlier called "textual indicators."² These textual indicators are, as we shall see, foundational in the sense that all indicators that are not, strictly speaking, textual (those that I shall later refer to as paratextual indicators),³ derive their authority from them. Their meaning is thus crucial to any enterprise that seeks to carry the search for rules of law beyond the limits of that meaning.

It seems to me quite clear that what Āmidī is really saying is that if we aspire to understand the *intended* meaning of any text—the meaning that the speaker/author has in mind and is seeking to communicate to others—we must first possess a knowledge of the meanings that the words used by the speaker/author *have* in the Lugha. The speaker/author (to whom I shall refer in the present context simply as the speaker, given that texts were for the medieval Muslims oral transmissions of spoken words) must be seen as communicating his own meanings by means of word-meaning correlations that already exist prior to his use of the words. He does not give meanings to words as he communicates but rather employs words that have already *been given* meanings. It is these preexistent meanings that he appropriates, transforming them into his own intended meanings. This, of course, is simply a way of saying that the speaker employs a code, one that may become a fit object of investigation in its own right.

A brief note on Arabic terminology is appropriate at this juncture. Āmidī—and I gather that this usage may be found throughout the literature of medieval Islam—speaks regularly of a speaker as "using an expression in" (*yasta'milu fī*) a certain meaning (or "in respect to" a certain meaning: *fī* sustains this sense equally well) and of the expression as "signifying" (*yadullu 'alā*) that meaning. Although it is possible, in the usage of the medieval Muslims, to speak of a speaker as signifying meanings, this usage is the exception rather than the rule. Generally it is expressions that signify meanings; and speakers are regarded as using the expressions. They use the expressions, of course, as signifiers of meaning, but it is the expressions that perform the signifying function for them. "Using an expression in a certain meaning" translates easily, I think, into "using an expression to convey a certain meaning," provided that we understand "convey" to be something that the speaker, not the expression, does. This speaker-oriented usage of the word "convey" ("communicate" might do just as well) accords well with the Arabic *ballagha* and its cognates (e.g., *balāgha*). It is because the expression is a signifier in its own right that the speaker may use it as an instrument for conveying a meaning—his intended meaning—to his hearer.

The relevance of the distinction between signifying and using can perhaps best be explained with reference to homonyms. If I say, "I am going to

the bank,” I am employing a word (“bank”) that has at least two meanings: a financial institution and the ground situated along the two sides of a river. The word “bank” *signifies* both of these meanings. In my statement, I am *using* the word in (or in respect to) one of those meanings. The context, of course, will explain which of the meanings I have in mind. Among English speakers, it is quite appropriate for one to ask, “In which sense are you using the word ‘bank’?”—implying that the word has several senses quite apart from the act of speaking. Even a word that is univocal—for example, “lion”—is susceptible to usage in a meaning other than its literal meaning.

To use an expression is thus to appropriate a particular signification of meaning that the expression performs on its own. It is the speaker’s usage that transforms a meaning into *his* intended meaning. Meaning *qua* meaning signified by an expression exists apart from a speaker’s intention. It is meaning of this sort—public meaning, we may say—that the term *ma’nā* generally signifies. Meaning *qua* meaning intended by a speaker—subjective meaning—is designated by means of such terms as *murād* and *maqsūd*. In the act of speaking a speaker does not, therefore, create meaning but rather appropriates meaning. Most of the medieval Muslims would have found the terminology popularized by Ferdinand de Saussure within modern linguistic and literary circles congenial to their thinking: they could freely have spoken of a speaker (or author) as operating within a setting of signifiers and signifieds (*dāllāt*, *madlūlāt*). In their dealing with texts, the medieval Muslims were, in other words, very strongly preoccupied with the powerful role of the code as the instrument through which the message was communicated.

They were not, however, as aware of the force of writing versus speaking as are many modern literary theorists. Writing was for them purely and simply recorded speech. In fact, texts were not thought of as being, in the first instance, written texts; rather, they were thought of as *orally transmitted* texts, as replications of original authoritative instances of speaking. But more on this in a later chapter.⁴

An intimate familiarity with the Lugha was not, it should be noted, seen as guaranteeing an immediate grasp of the speaker’s intended meaning from any given set of words, for particular words may, taken in isolation, obscure that meaning rather than convey it. To begin with, a good many words are ambiguous. In the case of those that are not, the possibility of figurative usage—or, to adopt the terminology to be employed in this book, usage in the *majāz* mode—must always be taken into account. However, this obscurity does not create a total impasse for the one seeking to determine the intended meaning, for one has a vast context—the entire corpus of authoritative texts—to which to turn for clues to that meaning. And if,

after having searched through this corpus to the best of one's ability, one is still left with some degree of uncertainty about the intended meaning, one is able, according to the generally accepted principle, to act upon one's considered opinion as to what constitutes the *probable* intended meaning, provided such an opinion has been arrived at. Throughout this toilsome search for the intended meaning, a knowledge of the Lughā plays a crucial role; for not only is it the basis of deliberation over the particular passage one is looking at, it is also the basis of deliberation over passages in which contextual clues are being sought.

Despite the ambiguity that was inherent in the Lughā and the susceptibility of expressions to usage in the *majāz* mode, the medieval Muslims for the most part regarded the Lughā as a perfect instrument of communication when used by those who had truly mastered it. A speaker who was proficient in the Lughā was expected to rely on contextual clues to overcome ambiguity inherent in isolated expressions. The context was as much a tool of communication as the expressions themselves. To ponder a given expression or set of expressions without taking the context into account was therefore to do an injustice to the speaker. Obscurity accordingly arose on the side of the hearer rather than on the side of the speaker and was due to the hearer's inadequate consideration of the full range of contextual factors that impinged on the given set of expressions.

Although the Muʿtazilis who wrote on jurisprudential topics attached great importance to the study of the Lughā as ancillary to the study of those topics, the Ashʿarī insistence upon the exclusively revelational, that is to say textual, basis of law and morality—an insistence that excluded any sort of extratextual rational categorizations of human acts—must surely be regarded as giving greater theoretical weight to the study of Lughā. If one can at least to some extent rely upon reason in seeking to distinguish good from bad and to discern what is obligatory or forbidden for humans, then—however much one may rely on texts in order to see more clearly what one sees only dimly through the exercise of reason or in order to ascertain what the Lawgiver may stipulate over and above the dictates of reason—one cannot be relying upon the texts in the same absolute manner as the one who refuses reason any role whatsoever. For the latter the lexical code employed in the texts is the sole point of contact with the realm of law and morality.

Āmidī's discussion of the Lughā-related postulates embraces two parts: a first and longer part concerned with the classification of the vocables that constitute the Lughā and a second, shorter part concerned with the origin of the Lughā and its transmission through time. I shall reverse Āmidī's order and deal with the origin and transmission of the Lughā first, for reasons similar to

those that prompted me to tamper with Āmidī's order of treatment of topics earlier.⁵ It seems to me that we can better appreciate what he says about the classification of vocables if we have first explored his thinking about the origin and transmission of the Lughā, for it is there that we come face to face with the understanding of the nature of the Lughā that was current among medieval Muslims.

According to the theory accepted by the great majority of Muslim thinkers,⁶ including both Mu'tazilīs and Ash'arīs, the Lughā originally emerged as the result of a kind of naming process in which certain vocal sound-patterns were arbitrarily chosen to be the labels for certain ideas. This way of thinking presupposes that vocal sounds and ideas constitute distinct and independent spheres, one purely physical, or extra-mental, and the other mental, and that these spheres have no intrinsic connection with each other. The Lughā emerged when vocal sounds and ideas were *brought together* with the result that the ideas became the meanings of the sounds, meanings that the sounds were capable of conjuring up in human minds. Whatever else it may be, the Lughā is thus fundamentally a system of conventional signs, of arbitrarily established sound-meaning correlations. It is, as I have said, a lexical code. Medieval Muslim thinking about the Lughā clearly reflects a semiological interest. Furthermore, the bringing together of sounds and meanings to form the Lughā would seem to have occurred more or less in a single stroke. The medieval Muslims saw the Lughā as too integral a thing to have evolved slowly and bit by bit over an aeonian stretch of time. It must have emerged out of some relatively singular event.

This view of the origin of the Lughā entailed a repudiation of an earlier view that was first propounded by a Mu'tazilī named 'Abbād ibn Sulaymān (d. 250/864), which apparently was held for a time by his followers. According to 'Abbād, there is a natural affinity between the vocal sounds of which the Lughā is made and their meanings: the sounds replicate their meanings in various ways. Because of this replication, the sounds have the ability to suggest or evoke meanings in human minds. The sounds are, in other words, *natural signs*. In contrast to this point of view, the majority opinion insisted that the relationship between vocal sounds and meanings was, despite certain obvious cases of imitation, on the whole quite fortuitous. The favorite argument was that there was no convincing reason why a word such as *aswad*, which means "black," could not—if enough people were to make the shift—come to mean "white." Even if something about the sound of *aswad* seemed to evoke the idea of blackness—which was very unlikely—it still remained conceivable that the word could, within a different community of speakers, serve to signify "white." The reason why *aswad* means "black" in Arabic was

solely that it had been *assigned* to that meaning. At least theoretically, it was subject to the possibility of reassignment.

Although this view of the emergence of the *Lugha* out of an arbitrary naming process soon gained a complete monopoly over Muslim thought, thanks to the quick demise of the naturalist view, the question of the identity of the agent or agents in this naming process was not so easily resolved. It appears that the original opponents of the naturalist view all held that this agent was God. Among them were a number of Muʿtazilis for whom the eminent Jubbāʾī appears to have been the leading spokesman, although the idea of the divine origin of the *Lugha* was also deep-rooted within the ranks of the emerging orthodox movement which at that time was spearheaded primarily by *hadīth* scholars and was generally opposed to rational disputation on theological topics.

Among the Muʿtazilī theologians, a debate over the identity of the inventor of the *Lugha* ensued when Abū Hāshim, son of Jubbāʾī, propounded the theory that the *Lugha* owes its origin to human agents. The arbitrary character of the sound-meaning nexus was never in doubt in this debate; the issue was solely whether this nexus was the result of divine fiat or of human convention. Against Abū Hāshim none other than the great Ashʿarī himself—a former fellow-student under Jubbāʾī—took up the cudgels on behalf of the divine origin of the *Lugha*. While this no doubt was to lend a certain prestige to the divine origin theory within Ashʿarī circles, the arguments used by the two sides in the debate seemed to be so evenly balanced that Bāqillānī (d. 403/1013), the leading Ashʿarī theologian of the century following the death of Ashʿarī himself (d. 324/935-6), chose to suspend judgment on the issue, and many Ashʿarī theologians after him seem to have followed his lead.

ʿĀmidī himself sees the balance of the argument as tipped slightly in favor of the divine origin theory, allowing him to embrace that theory as an opinion while disclaiming full certainty about the matter. The strongest piece of evidence in favor of that theory is, for him, a Qurʾānic statement found in 2:31: “And He [God] taught Adam all the names” (*wa-ʿallama ādama al-asmāʾa kullahā*). Like most textual indicators, this statement is subject to interpretation. *ʿAllama*, say the opponents of the divine origin theory, does not necessarily mean “taught”; it can be interpreted to mean “inspired with the impulse to do a thing.” ʿĀmidī regards this interpretation as possible only where there is strong evidence in its favor; in itself it is farfetched and in the absence of evidence in its favor should be abandoned in favor of “taught,” the common meaning of *ʿallama*. Due to other exegetical (for example, does *al-asmāʾ* really refer to the *Lugha* in its entirety?) and theoretical problems, ʿĀmidī refrains from making a dogmatic pronouncement.

Those who viewed the Lughā as arising out of a divine impartation of names to Adam did not, it should be noted, necessarily claim that Adam spoke Arabic. The Arabic Lughā was, for most of them, distinct from the original Adamic Lughā. The nature of the relationship of the various *lughāt* found among the earth's peoples to the Adamic Lughā became a matter of great speculation and need not detain us here. In the end, the controversy over the origin of the Lughā, whether Arabic or Adamic, was not deemed sufficiently momentous to require resolution. The acknowledgement by such eminent Ashʿarī theologians as Bāqillānī and Āmidī that a decisive resolution was not possible (even if opinions might be warranted) indicates that such a resolution was not deemed vital to the interests of orthodoxy, and the noncommittal attitude that came to prevail with respect to this issue makes the discussion of it a matter of minor importance in the intellectual history of Islam.

What is really important is the view that all parties shared, which became a definite hallmark of orthodoxy: whoever the inventor or inventors of the Arabic Lughā may have been, the sound-meaning correlations that make up the Lughā are unquestionably the result of deliberate, consciously undertaken rational action. To use the standard Arabic term, the Lughā emerged out of *wadʿ*, a “laying down” or “positing” of vocal sounds as the names of ideas. *Wadʿ* is not unlike the *thesis* of Greek speculation about the origin of language; just as *thesis* stood in opposition to *physis*, so *wadʿ* stood in opposition to *tabʿ*, the natural affinity between sounds and meanings (although, as I have argued elsewhere, the *thesis-physis* debate of the Greeks cannot be said to have been carried over into the Islamic world). As a deliberate, purposive activity, *wadʿ* bespeaks the presence of mind as the motive force behind the lexical code: the Lughā is a pure artifact. Though Muslim thinkers hesitated to identify the agent or agents behind *wadʿ*, they did not hesitate to speak continuously of such an agent in a general or generic way. Behind every meaningful sound that the human speaker produces in his intercourse with other human beings lurked, in their thinking, the anonymous *wādiʿ* or “positor.”

The concept of a primordial invention of the Lughā raised in the minds of the medieval Muslims the question of how the results of this process of invention are known. The results are, of course, the Lughā itself, and the question is thus a question of how the Lughā is known. The knowledge of the Lughā is tantamount to a knowledge of an event in the primordial past, the moment of invention. When one claims to know that a particular word has a given meaning, one is claiming to know that the word was, in the primordial moment of invention, assigned to that meaning. The results of the moment of invention do not constitute the Lughā in its entirety, as we shall see, but they do

constitute the substratum or foundation upon which all else that is contained in the *Lugha* is built.

In their discussions of how the *Lugha* is known, we discover even more telling features of Muslim thinking about the *Lugha*. Āmidī's own discussion is very brief,⁷ and I shall here be relying largely on my studies of the writings of other Muslim authors. Though brief, Āmidī's discussion reflects the background of the more extensive discussions carried on among Muslims.

The invention of the *Lugha*, as I have said, was considered to be more or less episodic, not a gradual evolution. The medieval Muslims were not concerned to estimate the days, months, or years that may have been involved; the question of the duration of the event was not even raised among them. It is clear, however, that the long periods of time of the sort envisioned in modern thinking about evolutionary processes were far from medieval Muslim thinking. That this is so becomes evident when we consider a central feature of the Muslim view of the *Lugha*: its tendency to regard the *Lugha* as a *constant*. The medieval Muslims were unable to see the lexical code as an evolving or fluid phenomenon, as being in continual flux. A lexical code was rather, for them, a discrete and integral entity that existed through time more or less intact. It was, in fact, a *sunna*, in the old Arabian sense, and the Arabic philologists sometimes referred to it as such. A *sunna*—the body of customs of a human community—was very much a constant: it undergirded the very continuity of communal life. Likewise, the lexical code also undergirded the continuity of the communal life, adding a linguistic dimension to the very identity of human communities.

There is no evidence that the medieval Muslims, or the pre-Islamic Arabs before them, gave any thought to the question of how a *sunna* emerged. Since any *sunna* was for them a constant, their thinking would necessarily preclude any idea of custom as an evolving phenomenon. One would suppose, therefore, that, to the extent they thought about the matter, they would have tended to view a *sunna* as having emerged somewhat episodically. This at least is implicit in the notion of *sunna* as a constant. No doubt the ultimate origins of the human *sunna* were for them largely enveloped in mystery, being bound up with the mystery of the emergence of primordial society. When the concept of *sunna* came to be incorporated into Islam as the Sunna of the Prophet, the great event that had given rise to that Sunna could, in contrast, be brought into view with relative ease. Against the longer reaches of time that preceded and followed the prophetic era, that era assumed a clearly episodic character. As with the semimythical ancestors of the earlier tribes, the Prophet bore the authority—in his case, a religious authority—requisite for a custom-maker.

It is not surprising that Muslim thinking about the Lugha followed the pattern of this thinking about *sunna*. Just as eminent forbears of a community, be they divinely inspired prophets or tribal ancestors, establish how the community will conduct its affairs, so the anonymous inventor (or inventors) of the Lugha, acting in a primordial past, establishes how members of the community will communicate with one another through the use of vocal sounds. The former are the cultural (in the broad sense) legislators of the community; the latter is the lexical legislator, the one who determines with authority and finality what vocal sounds will mean.

Furthermore, just as the emergence of *sunna* was tied to the emergence of the human community, the same could be said of the emergence of *lugha* through *wad^c*, the primordial invention. *Wad^c* appears to have been viewed as an integral part of the emergence of original primordial society such that its proper link is with the tribal *sunna* rather than with the prophetic *sunna*, which arises within a setting in which the human community already exists replete with language and custom. *Lugha*, like nonlinguistic custom, is a condition for the very existence of society. Just as large human groups, which are the *sine qua non* of human survival, can come into existence as genuine solidarities only if there are agreed-upon ways of living together, so they can come into existence only if there are means whereby they can communicate with one another. Both conditions—the emergence of tribal *sunna* and the emergence of *lugha*—are necessarily met simultaneously, as part of the single event of the emergence of primordial society. It is not difficult to understand why the whole phenomenon was seen to be shrouded in obscurity.

The Muslim assimilation of *lugha* to *sunna* enlarges upon a phenomenon that is easily recognizable in any linguistic community. Members of the community do not normally adopt the attitude of Humpty-Dumpty in *Alice in Wonderland* (“A word means exactly what I choose it to mean”) and freely invent words as they speak. Rather, they adhere to long-established practice, using words that have carried certain meanings since time immemorial. This is not to say that they will be consciously bowing to authority. In speaking English, I am primarily concerned to communicate with other human beings, and the ideas I wish to communicate may be quite radical or deviant. But a degree of adherence to authority, to norm, is nonetheless implied in my speaking. I know that I cannot effectively communicate if I arbitrarily make up words as I go along; I know that I shall succeed in communicating only if I make my verbal behavior conform to the sound-meaning correlations established within the community of speakers of the English language. The medieval Muslim way of thinking enlarges upon this phenomenon in the sense that it gives strong explicit emphasis to the element of authority at work in

the functioning of the Lughā. What the inventor(s) of the Lughā establishes is normative *for all time* within the linguistic community. While our modern view of the semiotic functioning of words envisions change over the long term, the medieval Muslim view does not allow for real change at all.

This is not to say that the Lughā is, in the medieval Muslim view, entirely static. A certain degree of what may be called semantic growth or expansion was considered possible and could, in fact, be shown to have actually occurred. Muslim theory placed this expansion under the heading of *ʿurf*, which may be translated as “postprimordial convention.” Āmidī gives as an example the word *dābba*. The meaning to which this word was originally assigned in the primordial moment of invention is “creeping thing.” In subsequent usage, however, it has come to refer to a certain kind of creeping thing, namely, the creature that creeps on four feet (in contrast to creatures, for example, the human biped or the centipede, that creep on some other number of feet). Thus postprimordial convention has narrowed the more general meaning arising from the primordial invention. Postprimordial convention is thus never wholly innovative in the way the original and episodic invention of the Lughā is. In the founding of the Lughā, sound-meaning correlations are established *de novo*. Postprimordial convention develops new correlations out of old ones, correlations that always retain some degree of affinity with their antecedents. Furthermore, postprimordial convention never eradicates the older, original meanings of words. Within the linguistic community, original meanings coexist with later meanings that are built upon them. Where original meanings cease to be current in everyday life, they are retained as an all-important legacy of the community by lexicographers, who function as the guardians and transmitters of the primordial Lughā. Through them the original meanings continue to be available to the community-at-large and to exercise a degree of ongoing normativeness. The primordial Lughā in some sense in its entirety remains alive as the ever-present substratum of everything else. It is this primordial Lughā that constitutes the Lughā par excellence, the proper object of investigation by lexicographers.

Although Āmidī includes the results both of the primordial invention (*wadʿ*) and of postprimordial convention (*ʿurf*) under the heading of *lughā*, or *al-asmāʾ al-lughawīya*, the term *lughā* in actual practice was commonly used to refer to the results of the primordial invention. Accordingly, the lexicographers are variously called *ahl al-lughā*, “people who concern themselves with the Lughā,” and *ahl al-wadʿ*, “people who concern themselves with the invention of the Lughā.” Furthermore, since Muslim scholars were preoccupied solely with Arabic, *al-lughā*, unless otherwise qualified, was understood to refer to the primordial language of the Arabs, the pristine Arabic that informed the speech of the Prophet Muhammad and his contemporaries.

We may now return to the question of how the Lughā may be known. What is at stake in this question is the knowledge of the sound-meaning correlations that were made normative for a particular community by the community's lexical legislator(s) in the primordial moment of lexical invention (*wadʿ*). It is thus not any sound-meaning correlations that one wishes to know but only those that have been established in a primordial past. Knowledge of the Lughā is thus, as we have already intimated, tantamount to a knowledge of a past event, of *wadʿ*. The question then is: how can one know in the present sound-meaning correlations that have been established in a remote and obscure past? It is here that the assimilation of *lughā* to *sunna* takes on special relevance, for while the Muslims were little interested in acquiring a knowledge of pre-Islamic tribal *sunna* (exclusive of *lughā*) as such they were very much interested in acquiring a knowledge of the Sunna of the Prophet Muhammad and in fact developed heuristic principles for this purpose. The knowledge of the prophetic Sunna is, like the knowledge of the Lughā, a knowledge of a past event. What one wishes to know is not just any norms of conduct but only those particular norms that were established by the Prophet through word and deed during the years he lived upon the earth.

This is not the place to discuss at length the heuristic principles governing the search for knowledge of the Sunna of the Prophet, since that task will be taken up in Chapter 6 of Part II. Here only a couple of basic points need be noted. The first is that discussions of the problem of knowledge of the Sunna chronologically preceded discussions of the problem of knowledge of the Lughā. This is no doubt to be attributed to sheer religious impulse. As the idea of the Sunna of the Prophet gained ground during the first two Islamic centuries, Muslims perceived the knowledge of that Sunna to be linked to their salvation. However, it was only a matter of time before Muslims would be led by the sheer logic of this pious undertaking to raise the question of how one knows what the words in which the Sunna finds expression (not to mention the words of the Qurʾān) mean. This question compelled them to extend their epistemological inquiry to the realm of the Lughā. The heuristic principles that had already been set up to guide the search for knowledge of the Sunna were clearly appropriate for the search for knowledge of the Lughā, since both kinds of knowledge amounted to a knowledge of a past event. To know that a word had a certain meaning was tantamount to knowing that the inventor(s) of language had assigned the word to that meaning, and this knowledge was clearly on the same order as the knowledge that the Prophet had said this or that or done this or that.

The second point to be noted follows from the first. Muslim scholarship in general was ready to acknowledge that the Sunna of the Prophet could not

always be known with complete certainty and that one very often had to settle for mere opinion as a substitute for knowledge. We shall have occasion later to explore more fully the interplay of knowledge and opinion as it pertains to the Sunna and to past events generally speaking.⁸ Here what is pertinent is that this recognition of the limits of the knowledge of past events and of the need in many cases to resort to opinion, which had grown out of the quest for knowledge of the Sunna, necessarily had to be carried into the domain of the Lughā. One could not always know with full certainty the meanings of words encountered in texts; at least in some instances the meanings of words would have to be a matter of opinion. Genuine knowledge of sound-meaning correlations established authoritatively in the remote past was possible only if information (*khābar*) about these correlations was transmitted on a wide scale from generation to generation, beginning with the generation that witnessed, or participated in, the original process of invention. According to a fundamental principle of Muslim thought that we shall explore later,⁹ information transmitted across generations on a wide scale gave rise to knowledge, while information transmitted by a limited number of individuals gave rise only to opinion.

Every member of a linguistic community is at some point a recipient of lexical information (i.e., the information that a given word has such-and-such meaning) and at some other point a transmitter of such information. Since sound-meaning correlations are not rooted in natural affinities between sounds and meanings that enable members of a linguistic community to perceive them directly, they depend utterly upon a process of transmission for their survival through time. When an individual acquires a familiarity with the Lughā early in life, he is on the receiving end of the transmissional synapse. He is the learner and his parents and other elders are the informants. They get across to him in one way or another what words mean. As he finds their information to be confirmed by other speakers in the larger society to which he is eventually exposed, he develops convictions about the backward projection of the Lughā through time. He senses that the Lughā has a long history stretching back many generations and that a word used by a figure in the past, such as the Prophet, had the same meaning as in the present. At the same time, as a mature and confident utilizer of the Lughā—and perhaps also as an elder member of a family unit—he begins to act as an informant or transmitter of the Lughā to the young.

To bring home the main point of this discussion, we may take the example of the Arabic word *shams* “sun,” as common a word as one can think of. Every speaker within the community of speakers of Arabic *knows* that *shams* is the name of that celestial body that gives light to the earth during the daytime.

This entails the knowledge that *shams* has always had this meaning and that to propose that there was a time when it had some other basic meaning instead of this one would be preposterous. The mature member of the community of Arabic speakers is thus sure that when the Prophet Muhammad used the word centuries earlier it had the same basic meaning for him as for contemporary speakers. Even if one makes allowances for nonliteral meanings of *shams* or for derivative meanings resulting from postprimordial convention (*ʿurf*)—of the latter of which there happen to be none in the case of *shams*—one still does not place in doubt the true original meaning, the meaning arising from the primordial invention of the Lugha.

But not all of the Lugha enjoys the same widespread transmission as do words on the order of *shams*. One supposes that medieval Muslim thinking about language must have allowed for some degree of loss of the primordial Lugha over time, although I know of no instances where this was actually said; if allowed, such a loss would have been regarded as minimal and inconsequential. What is expressly acknowledged is the decline of usage of words such that they cease to have the widespread circulation that fosters certainty as to their meaning. It is with respect to such words that the lexicographers of the community play a crucial role. They become the preservers of at least part of the primordial Lugha that might otherwise be lost altogether. While they do indeed record the meanings of words, such as *shams*, that continue to be widely current within the linguistic community and in so doing contribute to the transmission process within the society at large, in the case of less widely used words or obsolete words they bear the primary responsibility for transmission through time, passing these words and their meanings, along with authoritative literary examples of their usage, from generation to generation through books and through live teacher-pupil contact. Where one depends only on the limited lines of transmission maintained by lexicographers alone, one cannot have a genuine knowledge of the meanings of words as established in the primordial moment of invention, but only opinion. However, since opinion on such matters is useful the labors of the lexicographers are not without benefit.

Āmidī takes the position that the greater part of the primordial Lugha has been transmitted on a scale sufficient to inculcate in his contemporaries certainty of its continuing existence.¹⁰ One may assume that for religious reasons most medieval Muslim scholars were inclined to the same view. If the greater part of the primordial Lugha is still present in contemporary usage in a manner that enables us to be certain that the meanings of most words are what they always were, then we can approach sacred texts in the confidence that we shall be able to attain a large measure of certainty about what the words

contained therein meant at the time of their origin and continue to mean for all time. Still, the viability of the Muslim religious worldview did not depend on this large measure of linguistic certainty. As long as *some* measure of certainty was possible, a measure sufficient to foster confidence about the most central themes of divine revelation, the edifice of Islam remained on a solid foundation. At the same time, opinion with respect to what did not admit of certainty could continue to play the useful role that we shall be exploring throughout this book.

We may now turn to that part of Āmidī's discussion of the *Lugha*-related postulates concerned with the classification of vocables and with issues relating to certain categories that emerge out of this classification. The first thing to note about Āmidī's classification of vocables—which in its main lines was an integral part of the scholarly tradition inherited—is that it reflects for the most part a semantic or semiotic interest: vocables are classified with reference to their functioning as signifiers, as bearers or conveyors of meaning. It is, in other words, a classification of vocables viewed as the constituents of the *Lugha*, as data that constitute a lexical code. Humans are, of course, capable of emitting vocal sounds that have no meaning, but for Āmidī these do not constitute a part of the *Lugha* and consequently do not merit consideration. Nonetheless, strictly speaking, the classification, as a classification of vocal sounds (*alfāz*), must have as its ultimate starting point the distinction between vocal sounds that have meaning and vocal sounds that do not. Āmidī's intellectual heritage is one that thrived on classification. As we noted earlier, knowledge was distinction.¹¹ If one truly knew what something was, one could be presumed to be able to distinguish that thing from all other things, to place that thing within some sort of classificatory scheme that embraced all things. Accordingly, the very classification of vocables presupposed a logically antecedent classification whereby one knew what a vocable was. All classification moved from the general to the specific.

The classification of meaning-laden vocables (*al-alfāz al-lughawīya*)—that is to say, of vocables that by virtue of their having been assigned to meanings in the primordial moment of invention constitute the *Lugha*—accordingly had to begin at the most general level possible. For Āmidī, this meant that it must begin with the distinction between simple vocables and composite vocables.¹² The latter are vocables that can be segmented into constituent parts, each of which carries an independent meaning; the former are vocables that cannot be so segmented. Quite obviously, the constituent parts of composite vocables must in themselves constitute simple vocables. A composite vocable is thus a vocable *composed* of simple vocables. Of particular interest to Āmidī in connection with

the category of composite vocables is the category of speech (*kalām*). While most Muslim scholars who thought about the matter before Āmidī's time considered a single word as constituting speech, Āmidī himself regards speech as exclusively composite, that is to say, as made up of at least two words. His acceptance of Zamakhsharī's definition of speech as "that which is composed of two words in such a manner that silence may follow it" in fact suggests that he equated speech with the sentence. He is careful, on the other hand, to point out that he is in this connection speaking of speech solely as *oral or phonic speech* (*al-kalām al-lisānī*), as speech made up of physical words. He is not speaking of mental speech (*al-kalām al-naḥsī*). The distinction between these two kinds of speech had great theological importance, as we have noted earlier.¹³

It is simple vocables rather than composite ones that come to the fore as Āmidī proceeds with his classification. This further classification begins with the division of simple vocables into three general categories: noun, verb, and particle, frequently described as the three parts of speech. This tripartite division is rationalized in the following way. A simple vocable either is such as to allow the formation of propositions entirely of its kind—that is to say, the formation of propositions in which both terms (subject and predicate) are of its kind—or it is not. If the former is the case, the vocable is a noun. An example of a proposition made up entirely of nouns is *al-insān hayawān*, "man [is] an animal." (We must bear in mind that Arabic sentences of this type, called the nominal sentence, do not contain a verb.) If the simple vocable is not such that a proposition may be formed entirely of its kind, then either it *may* function as *one* (but not both) of the two terms of a proposition, in which case it is a verb, or it may not, in which case it is a particle. Thus if a vocable may be either a subject term or a predicate term within a proposition, it is a noun; if it may be a predicate term but never a subject term, it is a verb; and if it may never be either a subject term or a predicate term, it is a particle.¹⁴

This classification may at first appear to the reader to be concerned primarily with grammatical function as a criterion. In fact, it is ultimately grounded in meaning-related criteria. Āmidī seems to presuppose a familiarity on the part of his reader with the discussions among Muslims of the question of why a noun can be either subject or predicate, a verb predicate only, and a particle neither. The theory worked out among the Muslims as an answer to this question employed very intriguing notions, which I have dealt with elsewhere.¹⁵ I shall not delve into this discussion here, since it is not germane to the principal subject matter of this book. I may note, however, that Āmidī reflects his own awareness of these discussions in his formal definitions of the noun, verb, and particle, which employ certain key notions in Muslim theory concerning the Arabic parts of speech. Thus the noun is what signifies a

meaning for its own sake without placing that meaning within a time frame; the verb is what signifies an "occurrence" (*hadath*), placing it within a time frame; and a particle is what signifies a meaning, not for its own sake, but as an element "in something else" (*fi ghayrihi*). Readers who wish clarification of the notions entailed in these definitions may refer to my other studies.

As we proceed to Āmidi's discussions of each of the three parts of speech, we discover that his discussion of the noun (sixty-one pages) far exceeds that of the verb (two pages) and the particle (nineteen pages). This apparent showering of greater attention upon the noun is, however, misleading; in order to get a true picture of Āmidi's thinking about the categories that emerge out of his classification of vocables we must realize that much of what he says in the course of his discussion of nouns also applies to verbs and particles. The reason for Āmidi's treatment of matters affecting noun, verb, and particle equally as part of his discussion of the noun, leaving the sections on the verb and particle for matters pertaining exclusively to those categories, may have something to do with the medieval Muslims' tendency to view nouns as the primary material out of which language is made. The Qur'ān, after all, in the passage that became the locus classicus for proponents of the divine origin of language, states simply that God "taught the names" to Adam. The Arabic term for "noun" and "name" is one and the same: *ism*. To teach language is thus, first and foremost, to teach nouns, the names of things. To an extent, verbs and particles themselves have a noun-like character, for they, too, were assigned, in the primordial moment of invention of the Lughā, to meanings in the manner of names.

An even more significant point pertains to the relationship between the noun and the verb. Muslim language theory considered that behind every verb stands a corresponding noun, the verbal noun (*masdar*). The function of the verbal noun, like that of any other noun, is to signify a simple idea. In the case of the verbal noun, this simple idea must be an occurrence (*hadath*) of some sort. The corresponding verb signifies this same idea but, in addition, signifies other elements of meaning as well. Thus the verbal noun *darb*, for example, signifies the act of striking, nothing more, while the verb *daraba*, in addition to signifying the act of striking, signifies that the act occurred in the past and that it was the act of some subject (for which reason the verb seeks by its very nature to be joined to a noun that specifies the subject). Since the function of *darb* as signifier of an act is contained among the functions of *daraba*, any classification to which *darb* is subject is also applicable to *daraba*, at least in respect to its functioning as signifier of the act of striking. Thus, for example, if one affirms that *darb* is a homonym (a category to be considered shortly), one must also affirm that *daraba* is a homonym.

In both the *Ihkām* and the *Muntahā* Āmidī speaks of four different ways of classifying nouns.¹⁶ He is not, however, entirely consistent in his presentation of these classification schemes in the two works. The presentation in the *Muntahā* seems more reliable in that it encompasses four clearly distinct schemes, whereas the *Ihkām* treats two of these as one without really amalgamating them and somewhat artificially creates a fourth scheme. In the discussion that follows the presentation of these classifications, it is not the schemes as such that are at issue but only certain categories that emerge out of them. We need, therefore, take only a brief look at the schemes themselves. Of the four presented in the *Muntahā*, the first is concerned primarily with logical categories that apply properly to concepts but that may be applied by extension, according to Āmidī, to nouns as the signifiers of concepts. Thus the primary distinction that emerges from this classification is the universal-particular distinction. Universals are then further divided into sub-categories: genus, species, and differentia in the case of essences and general accident (*al-ʿarad al-ʿāmm*) and distinctive property (*al-khāssa*) in the case of accidents. Āmidī also takes note of an alternative subdivision of universals, one that yields the categories of attribute (*sifa*) and non-attribute (i.e., substance), with the latter embracing what may perhaps best be called concrete substance and abstract substance (the Arabic terms are *ʿayn* and *maʿnā*).

The second classification is concerned mainly with the distinction between pronouns—which Muslim grammar placed under the heading of nouns—and other nouns. A pronoun is considered to be a noun whose precise meaning (referent) is always obscure and must therefore be known from the context. Thus if someone says to me *huwa karīm*, “he is generous,” he will, of course, have some particular object in mind, but I can never know the identity of this object from the pronoun alone. If, on the other hand, one says *hādhā al-rajul Karīm*, “this man is generous,” or *zayd karīm*, “Zayd is generous,” I know immediately who or what is in the speaker’s mind. Nouns such as *al-rajul* and *zayd* are considered to be, in contrast to pronouns, “explicit” (*sarīh*). Pronouns are further subdivided into personal and demonstrative pronouns.

The third classification of nouns mentioned in the *Muntahā* (in the *Ihkām* it is subsumed under the first) employs the principles of unity and plurality with reference both to the nouns themselves and to their meanings. This approach, on strict logical analysis, yields four categories: a plurality of nouns signifying a plurality of meanings, a plurality of nouns signifying a single meaning, a single noun signifying a plurality of meanings, and a single noun signifying a single meaning. However, the first and fourth prove to be indistinguishable as categories of the noun. *Samāʾ*, *ard*, and *bahr* represent a plurality of nouns signifying a plurality of meanings (“sky,” “earth,” and “sea”), while *samāʾ* alone represents

a single word that signifies a single meaning. Āmidī accordingly makes no mention of the fourth category but speaks only of the first three. The first of these (a plurality of nouns signifying a plurality of meanings) he calls the category of mutually exclusive nouns (*al-asmā' al-mutabāyina*). Nouns belonging to the second category are easily recognized as synonyms (*al-asmā' al-mutarādifa*). As for the third category (a single noun signifying a plurality of meanings), it is subdivided into several categories, only one of which need concern us here: the homonym (*mushtarak*).

These three categories—mutually exclusive nouns, synonyms, and homonyms—were presumed by Muslim scholars originally to have arisen in different ways in the moment of invention of the Lughā. In the case of mutually exclusive nouns, the inventor(s) assigned different vocables to different meanings. In the other two cases, he either assigned a plurality of vocables to one and the same meaning (synonyms) or assigned a single vocable to a plurality of meanings. In all three cases, multiple assignments occurred. Synonyms and homonyms were thus not the product of a single inventive act. The inventor of the Lughā gave rise to synonyms by first assigning a particular vocable to a particular meaning and then subsequently, in a separate act of invention, assigning another vocable to the same meaning, and so on. Similarly, he gave rise to homonyms by first assigning a particular vocable to a particular meaning and then subsequently assigning the same vocable to another meaning.

The fourth classification scheme presented in the *Muntahā* (the third in the *Ihkām*) is much simpler than the foregoing. It is concerned solely with two categories, called in Arabic *haqīqa* and *majāz*. Āmidī defines the first of these as “a vocable used to convey (*mustaʿmal fī*, a phrase discussed earlier in this chapter¹⁷) the meaning to which it was originally assigned as an item within the lexical code [that is to say, within the Lughā].”¹⁸ The latter he defines as “a vocable used to convey a meaning other than the meaning to which it was originally assigned on account of a relationship between the two meanings.”¹⁹ I shall throughout this book designate the meaning to which an expression was originally assigned—the *mawdūʿ lahu*—as the expression’s literal meaning. The two definitions can accordingly be reworded as follows. The *haqīqa* is a vocable used to convey its literal meaning, while the *majāz* is a vocable used to convey a meaning other than the literal meaning on the strength of a relationship between that meaning and the literal meaning. “On the strength of” (a more interpretive rendering of *li-* than “on account of”) is meant to suggest that it is the relationship in question that undergirds or justifies the use of the expression to convey the other meaning.

This relationship may consist of a physical resemblance, as when we refer to a figure in a portrait as a man, or a quality, as when we refer to a man noted for his fearlessness as a lion, or a past condition, as when we call a freed man a slave, or a future outcome, as when we call grape juice wine and so forth. It is by virtue of this relationship between meanings that a word such as “lion” (the favorite example of medieval Muslim writers), which may be used with reference either to a particular predatory feline or to a fearless man (its literal and nonliteral meanings), is to be excluded from the category of homonyms. If the quality of fearlessness, as a quality presumed to be present in both the animal and the man in question, were not taken into account in the use of the word “lion” for the man, then the word would indeed be a homonym.

The example of “lion” tempts one to translate *majāz* as “metaphor” and to find a suitable complementary translation of *haqīqa*, such as “proper term.” However, there are many instances of the *majāz* to which “metaphor” does not apply. “Figure of speech” and “trope,” though more comprehensive than “metaphor,” are no less problematic. For example, as Āmidī later notes, the Arabic word *yad* was thought by some Muslim scholars to have “arm” (inclusive of the hand) as its true literal meaning such that when used of the hand only it becomes *majāz*. Even a conjunction can have a nonliteral meaning and be counted as *majāz* when used to convey that meaning. *Fa*, when used to convey the idea of succession (*taʿqīb*), is regarded by some as *majāz*. As we will see in chapter 7 of Part II,²⁰ many jurists regarded the imperative form *ifʿal* as *majāz* when used to convey any notion other than imposition of obligation. Furthermore, the theory of semantic growth through postprimordial convention (*ʿurf*, discussed earlier in this chapter²¹) maintained that new literal meanings begin as nonliteral meanings: these over time gain frequency in usage and become literal in their own right. Thus, *dābba*, whose primordial literal meaning is “creeping thing,” was originally *majāz* in relation to the meaning “four-footed creeping thing.”

Clearly, to speak of any of these instances of *majāz* as figures of speech or tropes is to stretch these categories beyond the limits of traditional usage. Such instances do not represent the sorts of figures of speech or tropes that poetry or belles lettres, for example, are made of. Rather, they show that an expression is *majāz* if it entails virtually any kind of movement beyond the domain of presently established literal meaning into the domain of novel but kindred meaning. Furthermore, it should be noted that within Muslim theoretical jurisprudence disagreements frequently arise as to whether given meanings of expressions are to be regarded as literal or nonliteral. This results in considerable debate at times regarding the application of the term *majāz* to

actual expressions. Such lively debate does not usually arise in regard to figures of speech and tropes.

Accordingly, I shall throughout this book employ the Arabic term itself as well as its opposite, *haqīqa*. This practice will, I think, be preferable to the strangeness or awkwardness of applying the term "figure of speech" or "trope" in unfamiliar ways. *Haqīqa* and *majāz* will thus be included among the small number of Arabic terms that my reader will be required to become familiar with. In most instances, I will use the terms as qualifiers and speak of *haqīqa*-expressions and *majāz*-expressions. (The hyphen will serve to keep the reader aware that *haqīqa* and *majāz* are Arabic nouns and that I am in this usage fusing an Arabic noun with an English noun.) I shall also frequently speak of expressions as being used in the *haqīqa* mode or in the *majāz* mode. This corresponds to the rather frequent adverbial usage of the Arabic terms (i.e., *haqīqatan*, *majāzan*).

It should be noted that in his definition of *haqīqa* and *majāz*, Āmidī places the two categories within the larger category of vocables, rather than that of nouns. This should serve as a reminder to us that, while Āmidī places his formal discussion of these categories under the heading of nouns,²² he does not regard the categories as applicable exclusively to nouns. Verbs and particles, too, may be *haqīqa* or *majāz*.

What truly distinguishes the *haqīqa*-expression from the *majāz*-expression is, it should be noted, usage (*al-isti'māl*): at least this is the view that Āmidī favors. In other words, one and the same vocable may be either *haqīqa* or *majāz*, depending on how it is used. "Lion," for example, is *haqīqa* considered in respect to its being used of (*isti'māluhu fi*) a predatory feline and *majāz* considered in respect to its being used of a fearless man. An expression is thus not *haqīqa* simply by virtue of its primordial assignment to a meaning. What arises out of the primordial invention of the Lughā are vocables laden with their literal meanings. The *assignment* of vocables to meanings must therefore be distinguished from the *use* of vocables. The former produces a stock of vocables that may then be used as either *haqīqa*- or *majāz*-expressions. In both cases the literal meaning enters in, but in different ways. When a vocable is used as a *haqīqa*-expression, the literal meaning is the meaning the speaker wishes to convey. When it is used as a *majāz*-expression, the literal meaning serves to evoke associations embedded in a meaning that is distinct from the literal meaning per se and that eclipses the literal meaning. The literal meaning in both cases comes to mind; in the one case it is at the center of attention, in the other it is on the periphery. A literal meaning must necessarily come to mind when one is presented with a vocable that has been assigned to such a meaning.

Vocables have, in medieval Muslim thinking, a triggering function: they trigger particular meanings in the mind, their literal meanings. When a vocable is uttered, its literal meaning rushes immediately (*mubādaratan*) into the mind of the hearer (unless, of course, the vocable has ceased to be current within the linguistic community). This, we may gather, is the result of continual exposure to the Lughā since early childhood, whereby meaning comprehension becomes a sort of conditioned reflex. It thus becomes a test of whether a particular meaning of a vocable is a literal meaning that it arises immediately in the mind of a mature member of the linguistic community upon hearing the vocable. In the case of the homonym, two or more meanings come immediately to mind, since a homonym is by definition a vocable that has, by virtue of a plurality of assignments in the primordial moment of invention, a plurality of literal meanings.

When a speaker uses a vocable as a *haqīqa*-expression, he is depending upon this triggering of the literal meaning as the mechanism whereby he gets his intended meaning—the literal meaning—across to the hearer. That is to say, he merely utters the vocable, allowing it to have its triggering effect on the mind of the person to whom he is speaking. When he wishes to use a vocable as a *majāz*-expression, he must tie the vocable somehow to a context from which it can be known that he is not using the vocable to convey the triggered literal meaning (however much it may enter in as a backdrop) but is rather using it to convey some other meaning. When there is no such tying of a vocable to a context, we know that the speaker wishes to convey the literal meaning. Context is thus vital to distinguishing *haqīqa* from *majāz* in actual speech situations.

The fact that an expression is either *haqīqa* or *majāz* by virtue of usage in concrete speech situations does not prevent Āmidī and other Muslim thinkers from speaking in a general way of an expression's being *haqīqa* or *majāz*. They could speak of "lion," for example, as being, quite apart from any particular speech situation, a *haqīqa*-expression for a particular predatory feline and a *majāz*-expression for a fearless man, for the word was always susceptible to being used to convey either of these two meanings. This susceptibility was seen to be rooted in the primordial invention of the Lughā. The inventor(s), in assigning an expression to a particular meaning, could be said to have in effect produced both a *haqīqa*-expression and a *majāz*-expression in the sense of having produced an expression that was susceptible to being used to convey either the meaning to which it was assigned or a related meaning. Accordingly, the medieval Muslim authors are free to speak of an expression as *haqīqa* for a given meaning (its literal meaning) and *majāz* for some other meaning.

A brief word on a category loosely related to but distinct from *haqīqa* is in order here. The category is *zāhir*. It is curious that Āmidī makes no mention of the *zāhir*-expression in the section of the *Ihkām* on Lughā-related postulates, that it is not among the categories that emerge from his classifications of vocables. Not until much later in the *Ihkām* does he turn to it. We shall look at the category of the *zāhir*-expression more closely in a later chapter.²³ Here it will suffice to take note of it and of its relationship to the category of *haqīqa*. An expression is *zāhir* if it has but one literal meaning such that one may *ab initio* regard that meaning as the probable intended meaning. It is always possible, of course, that the speaker may be intending a nonliteral meaning. But this must be demonstrated on the basis of a contextual clue, in which case an *ab initio* probability is overturned in favor of a less likely though always possible deviative usage. It is the initial probability, engendered by the *zāhir*-expression, of the literal meaning's being the intended meaning that distinguishes the *zāhir*-expression as a category. Two things enable the *zāhir*-expression to engender this initial probability: its univocality—its having but one literal meaning—combined with the preponderance of literal meaning over nonliteral meaning, a preponderance arising from the greater frequency of the former.

Since it is the former factor that is distinctive of the *zāhir*-expression, the term *zāhir* (considered, of course, as a technical term applicable to expressions) is perhaps best rendered as “univocal,” although this is, of course, not its ordinary sense in Arabic. It must be clearly understood that the univocality under consideration here exists entirely at the level of literal meaning. The opposing category is the equivocal or ambiguous expression (*mujmal*), another category that does not appear in the section on Lughā-related postulates, although the homonym, which does appear in that section, is perhaps the most important sub-category of the equivocal expression.

What is important to note here is that a *zāhir*-expression is what it is by virtue of a univocality established in the primordial moment of invention of the Lughā. Actual usage by a particular speaker as determined by consideration of the context does not enter in. The *zāhir* status of an expression relates entirely to its functioning as a signifier; as a univocal signifier it yields a probable intended meaning. But that probable intended meaning may turn out, after the context has been thoroughly examined, not to be the actual intended meaning. A *zāhir*-expression may, in other words, turn out to be *haqīqa* or it may turn out to be *majāz*. Here, and here only, is where the actual usage of the speaker is decisive.

One may be tempted to say that a *zāhir*-expression, in engendering the probability that the literal meaning is the intended meaning, is in effect

engendering the probability that it is functioning as a *haqīqa*-expression. Of course, if the literal meaning of an expression is the probable intended meaning, then it follows that the expression enjoys a probability of being a *haqīqa*-expression. But it is not the case that the *zāhir*-expression engenders this latter probability, for one can say, in view of the preponderance of literal over nonliteral meaning (mentioned above), that such a probability always exists *ab initio*, whether the expression is univocal (*zāhir*) or not, whether it has one literal meaning or several. In actuality, Āmidī's discussion makes it quite clear that the *haqīqa* status of an expression in a concrete speech situation is affirmable only with reference to the speaker's usage as judged on the basis of a consideration of contextual factors, including the absence of positive clues indicating a diversion to nonliteral meaning, which is in itself a kind of negative contextual clue supporting the *haqīqa* status. In this lies the principal difference between the categories of *zāhir* and *haqīqa*.

But there is another difference. An ambiguous expression—say, a homonym—may never be *zāhir*, whereas it may be *haqīqa*. If someone says, "I am going to the bank," he may mean either the side of a river or a place where he maintains financial accounts. The word "bank" is incapable on its own of engendering a probable intended meaning, since its two meanings are *ab initio* equally possible, with neither having any preponderance over the other. However, once it is known from the context which meaning the speaker is intending to convey, it can then be said that the expression is *haqīqa* with reference to that meaning. Looking at the word in a general way, quite apart from any particular speech situation, it may be said that the expression is *haqīqa* with reference to both meanings in the sense that it is susceptible to being used to convey either of the two literal meanings.

An important point of contrast between the *zāhir*-expression and the ambiguous expression arises at this point. I noted above that it is the combination of univocality and preponderance of literal meaning over nonliteral meaning that produces the probability that the literal meaning of the *zāhir*-expression is the intended meaning. The preponderance of literal meaning is also present in the case of ambiguous expressions, but it is of no avail owing to the absence of univocality. A plurality of literal meanings, notwithstanding their preponderance over any nonliteral meanings that might be envisioned, does not yield a probable intended meaning, since a more fundamental preponderance is missing—the preponderance of one of the literal meanings over the others. This can arise only from consideration of the context. A *zāhir*-expression yields a probable intended meaning prior to consideration of the context.

The term *zāhir*, it should be noted, is applied in the literature of medieval Islam not only to a certain category of expressions (the application considered in the preceding paragraphs) but also to the meanings that those expressions signify as *zāhir*-expressions. I have suggested that *zāhir* as a technical term applicable to expressions may be rendered as “univocal.” As a technical term applicable to the meanings of those expressions, it is, I think, best translated as “apparent.” Here we are getting much closer to the ordinary meaning of the term. What we are dealing with is the apparent *intended* meaning, the meaning that appears from the expression itself considered apart from the context to be the meaning intended by the speaker. “Apparent” is closely related to “probable.” The meaning in question is the apparent intended meaning by virtue of its being the sole literal meaning of the expression and by virtue of the preponderance of literal meaning over nonliteral meaning.

I am obviously taking exception to the common practice of translating *zāhir* as “literal.” A *zāhir* meaning is, of course, a literal meaning, but it is more than that: it is a literal meaning that has no competitors and thus has an *ab initio* claim to be the meaning intended by the author. A literal meaning may exist alongside other literal meanings, in which case it has no such claim and the expression is rendered ambiguous. There is, I acknowledge, no single word in the vocabulary of the *Ihkām* that corresponds to “literal.” There is, however, a frequently occurring phrase that justifies my use of this term: *mā wudī‘a lahu ‘l-lafzu awwalan*, “that which an expression is originally assigned to.” Literal meaning is meaning considered solely in terms of an expression’s having been originally assigned to it in the primordial moment of invention of the *Lughā*. In the literature of the “science of *wadī‘*,” which was to emerge as a distinct Islamic science approximately two centuries after the time of *Āmidī*,²⁴ the term *mawdū‘ lahu* appears frequently as the designation of a meaning considered from this perspective (with *mawdū‘* as the corresponding designation for the expression). “Originally” distinguishes the assignment of expressions to literal meanings from their subsequent assignment to nonliteral meanings, even though the majority of Muslim philologists and jurists rejected the notion of an assignment of expressions to nonliteral meanings, as we shall see shortly. For those who did accept such an assignment it was important to emphasize that any such assignment presupposed a *previously* established literal meaning and hence a prior assignment of the expression.

To return to our main subject: *haqīqa* and *majāz*. Important aspects of *Āmidī*’s thinking about the functioning of these two categories of expressions come to light in his discussion of the term *majāz*. This term is, he notes, a derivative of a verbal noun (*al-jawāz*) meaning “transference from one condition

to another" (*al-intiqāl min hāl ilā hāl*). One may say, for example, using the corresponding verb: *jāza fulānun min jihati kadhā ilā jihati kadhā*, meaning "So-and-so transferred [himself] from here to there." When applied to the use of vocables, *jawāz* refers to the transference of a vocable from the condition of being a *haqīqa*-expression (its natural tendency) to the condition of being something else.²⁵ This transference takes place through the instrumentality of the context. The principle that underlies this notion of transference is that every vocable tends toward the condition of being a *haqīqa*-expression, owing to the fact that the use of vocables as *haqīqa*-expressions is more frequent within the linguistic community and therefore, in a given instance, more likely. What is more likely is always, in medieval Muslim thought, principal (*asl*) in relation to what is less likely, "principal" here having the sense of "presumed to be the case." A vocable may be presumed to be functioning as a *haqīqa*-expression if a thorough search of the context has yielded no evidence to the contrary. Where contextual clues show it to be functioning as a *majāz*-expression, the vocable may be said to have been transferred from the realm of the principal and ordinary to the realm of the exceptional.

Given this explanation of the term *majāz*, it may be said to have an affinity with the English term "metaphor" despite my decision not to adopt this term as a translation, for reasons given earlier. "Metaphor" is a derivative of the Greek *metapherein*, "to transfer." The principal difference between *metapherein* and the Arabic *jawāz* is that the former is transitive and the latter intransitive ("to transfer one's self, be transferred, pass"), a difference of little real consequence.

It may be noted here that a *majāz*-expression is frequently, in Muslim philological literature, described as an expression that has been "diverted" (*surifa*) from its literal to a nonliteral meaning. The notion of diversion gives the term *majāz* an affinity with another English word of Greek derivation, "trope" (from *trepo*, "to turn").

As we have already observed, along with the meaning (or meanings) to which it was originally assigned, a vocable may have an additional literal meaning (or meanings) arising out of subsequent convention (*ʿurf*), which represents a modification of the original meaning. Although the term *wadʿ* is normally restricted to the original assignment of vocables to meanings, Āmidī speaks of subsequent convention as carrying on a sort of *wadʿ* (though it is not called that), as vocables get reassigned to new meanings. This reassignment is evident in the fact that the new meanings arise immediately in the minds of members of the linguistic community upon their hearing the vocable. What may have started as a use of a vocable as a *majāz*-expression has, through sheer frequency, resulted in a reassignment of the vocable,

as the original literal meaning loses currency. Accordingly, a new kind of *haqīqa*-expression emerges, one related to the new situation. This calls for a definition of the *haqīqa*-expression suited to the new situation. The *haqīqa*-expression is now a vocable that is used to convey the meaning to which it has been assigned through postprimordial convention. It should also now be possible for a corresponding *majāz*-expression to emerge, one definable as a vocable used to convey a meaning other than its newly acquired literal meaning that has some connection with that meaning. I am here using the term “acquired literal meaning” to distinguish the meaning resulting from postprimordial convention from the original literal meaning.

Āmidī refers to the two types of *haqīqa*-expressions just considered as *al-haqīqa al-wadʿiyya* and *al-haqīqa al-ʿurfiyya*.²⁶ It is the former, he says, that is at the center of attention in scholarly discussion (*kalām*). It seems that, however much Muslim scholars may have believed the Arabic language to have been influenced over the centuries by postprimordial convention, they approached the study of the sacred texts with the sense that the *Lugha* employed in those texts—or, for that matter, the *Lugha* employed in all texts written in the high classical style (*al-fusha*)—was essentially rooted in the primordial *wadʿ* and that the *haqīqa*- and *majāz*-expressions found in those texts had as their point of reference original meanings, not meanings that have arisen through postprimordial convention. If the *Lugha* was truly a *sunna*, it would remain at its core what it always had been from the very beginning. Furthermore, the more elegant the phraseology of any text, the closer it would be to the pure *sunna*.

While scholars might not give a great deal of attention to the *ʿurf*-based *haqīqa*-expression (*al-haqīqa al-ʿurfiyya*), there was still a third type of *haqīqa*-expression to which they were compelled to give somewhat greater attention, even if it did not demand quite the same degree of attention as the *wadʿ*-based *haqīqa*-expression. We may call this type the Shariʿa-based *haqīqa*-expression: Āmidī’s Arabic designation is *al-haqīqa al-sharʿiyya*. This expression is defined as an expression distinctive of the Shariʿa that is used to convey the meaning to which it was originally assigned in the Shariʿa. Examples are words such as *salāh*, *hajj*, *zakāh*, *īmān*, and *kufr*. Here again we find the term *wadʿ* extended, quite untypically, to something other than the primordial *wadʿ*, namely, an assigning of vocables to special meanings distinctive of the Shariʿa. This assigning appears to be something like that which takes place through postprimordial convention. The author of the Shariʿa does not fashion new vocables but takes preexistent ones, reassigning them to meanings that are modifications of or outgrowths from their original literal meanings. In this way the special idiom of the Shariʿa emerges.

Āmidī places Shariʿa-based *haqīqa*-expressions in a class by themselves, apart from the other two types of *haqīqa*-expressions (*wadʿ*-based and *ʿurf*-based), by placing the latter two under the heading of *al-haqīqa al-lughawīya*, the *haqīqa*-expression that belongs within the domain of the Lughā. This suggests that Shariʿa-based *haqīqa*-expressions do not belong within the domain of the Lughā. Whether they do or do not belong within this domain was in fact an issue that the medieval Muslims debated, as we shall see shortly.

It must be emphasized, with regard to *ʿurf*-based *haqīqa*-expressions, that it was within the context of the study of classical texts, especially the sacred texts, that this category of expressions was relegated to the periphery of Muslim thinking. From another perspective such expressions could be very much at the center of attention—the perspective of Muslim scientific procedure; for the Muslim religious sciences would have been unable to embark upon investigative inquiry without a body of technical terms through which the methodology of investigation could be worked out. Accordingly, one discovers that in Muslim scientific writing a great deal of ink is used in defining key technical terms. We have already encountered a number of them in the present study. A good example is the word *majāz*. The original literal meaning of its etymon, *jawāz*, is, as we have just noted, “transference from condition to condition.” Out of this, the science of theoretical jurisprudence develops a modified, more specialized meaning (“transference of a vocable from being a *haqīqa*-expression to being a *majāz*-expression”), as a result of which it becomes a technical term of that science. Such technical terms as *majāz* are clearly the product of postprimordial convention (*ʿurf*), whether the convention of jurists, of philologists, of theologians, of Sufis, or whatever, and are therefore subsumable under the category of *al-haqīqa al-ʿurfiya*. Here *ʿurf* arises in the service of scholarly inquiry.

Of the various categories that emerge out of Āmidī’s classifications of nouns, four are at the center of attention in the discussions of Lughā-related issues that follow these classifications. These are the homonym, the synonym, the Shariʿa-based idiomatic expression, and the *majāz*-expression. Though treated within the formal structure of Āmidī’s writings under the heading of nouns, these categories also embrace verbs and particles. Since the categories of *haqīqa* and *majāz* have just been discussed, I shall treat the four categories in the reverse of the order of treatment found in the *Ihkām* and the *Muntahā*.

With respect to the *majāz*-expression, two issues arise. One of these is whether *majāz*-expressions are to be considered as belonging within the domain of the Lughā.²⁷ As we have noted, an expression is *haqīqa* or *majāz* by virtue of usage: if it is used to convey its literal meaning, it is *haqīqa*, whereas if it is used to convey a nonliteral meaning that is related in some way to its literal

meaning, it is *majāz*. To some Muslim scholars—Āmidī mentions Abū Ishāq al-Isfarāʿīnī and his followers—it seemed that to use an expression to convey a meaning other than its literal one was to step outside the domain of the Lughā. The Lughā was for them a repository of expressions laden with literal meanings, nothing more. One remained within the bounds of the Lughā only when one used expressions to convey those literal meanings. Clearly, anyone who adopted this point of view necessarily excluded the concept of the *majāz*-expression from the methodology that he employed in the exploration of the meaning of the authoritative texts, for it was a universally acknowledged principle that those texts were paradigms of adherence to the Lughā.

Āmidī argues for the opposing viewpoint, which was that of the majority. No one can deny that the “people of the Lughā” (*ahl al-lughā*)—that is to say, the people upon whom we rely for a knowledge of the Lughā and who were themselves noted exemplars of correct usage of the Lughā—used to call fearless men lions and foolish men donkeys and used to employ phrases such as “the back [or spine] of the road” (meaning the middle of the road) and “the heart of the sky” (meaning the zenith of the sky), to mention only a few examples. Clearly, therefore, this usage belongs within the domain of the Lughā; and since we have no choice but to classify these expressions as *majāz*-expressions, we are obliged to conclude that the use of *majāz*-expressions is possible within the domain of the Lughā.

Āmidī mentions two arguments that were used by Isfarāʿīnī and his followers. These represent rather different points of view. The first proposes that since, given the requisite contextual clues, the word “lion” can only refer to a fearless man, not to the particular predatory feline that is its meaning in the absence of such clues, it should be regarded as a *haqīqa*-expression for “fearless man.” Thus one ends up with two types of *haqīqa*-expressions, one requiring contextual clues and the other functioning in the absence of such clues. For Āmidī this proposal for a revised terminology that seeks to resolve the issue under consideration simply by discarding the term “*majāz*” is unconvincing and amounts to terminological quibbling.

The second argument seems to challenge Āmidī’s claim that the examples of *majāz*-expressions that he mentions can in fact be attributed to the “people of the Lughā.” This argument contends that it would have been inconsistent with the purpose behind the primordial founding of the Lughā for *majāz*-expressions to have been given a place within the Lughā—that purpose being to facilitate communication. When people convey meanings in a manner that requires consideration of something other than the words they utter—that is to say, the context, something undeniably vague—they impede communication and, if anything, violate the spirit of the primordial invention of

the Lughā. In the interests of promoting communication, the inventor(s) of the Lughā could only have wished to establish arrangements whereby individuals conveyed meanings directly through vocables, not indirectly through something else. For every *majāz*-expression one can think of, there is a suitable *haqīqa* counterpart. For example, one need not call a fearless man a lion when one can call him a fearless man.

This belief in the utility and rationality of the Lughā, reflecting the wisdom of the original inventor(s), seems to have received general acceptance among medieval Muslim thinkers, giving it the status of a Muslim consensus and thus considerable force as a basis of argumentation. We shall see that appeal to this belief reappears in the discussions of issues that we shall be considering momentarily. It was a belief that even those who included *majāz*-expressions within the domain of proper Lughā usage could not gain-say. Therefore, they were constrained to phrase their response to the adversary's argument in such a way as not to call this belief into question. Thus one argued that the enhancement of eloquence in communication and elegance of style was part and parcel of the grand design behind the primordial invention of the Lughā and that the *majāz*-expression was one device among others whereby this enhancement was attained.

The other issue relating to the *majāz*-expression was debated, and could be debated, only among those who allowed a place for the *majāz*-expression within the domain of the Lughā. If the *majāz*-expression truly had a place within correct Lughā usage, it must have some sort of sanction from the original inventor(s) of the Lughā. The question was: what was the nature of this sanction?²⁸ Did the inventor(s) of the Lughā assign particular vocables to nonliteral meanings, or did he (they) simply sanction the general notion of the *majāz*-expression, leaving it to subsequent generations to invent particular *majāz*-expressions freely in accordance with this general mandate? One who adopted the former view was constrained to make two further assertions. The first is that when the inventor(s) of the Lughā assigned vocables to nonliteral meanings he (they) took into consideration only meanings having some connection with the literal meanings and stipulated *in each case* that the vocable under consideration would signify its nonliteral meaning by virtue of the presence of a contextual clue. This assertion was necessary in order to distinguish the vocable having a literal and a nonliteral meaning from the homonym, which had a plurality of literal meanings. One could not assert that the inventor(s) of the Lughā assigned the word *asad*, ("lion,") to the meaning of "fearless man" in the same way that he (they) assigned the same word to the meaning of "a predatory animal characterized by such-and-such features."

The second requisite assertion was that each correlation between an expression and a nonliteral meaning that the inventor(s) of the *Lugha* established needed to be transmitted from generation to generation in the same manner as all other sound-meaning correlations. The *Lugha* was thus a repository of expressions, many of which were, by virtue of the primordial inventive process, laden with both literal and nonliteral meanings. A speaker had the option of using such an expression in its preestablished literal or nonliteral meaning. If he did the former, the expression was rendered *haqīqa*; if the latter, *majāz*. This way of thinking, curious as it may seem, no doubt reflected a sense that the Arabic *Lugha* provided a stock of standard *majāz*-expressions that all Arabic speakers who wished to adhere to propriety were expected to use. As one did not in one's speech freely give literal meanings to words, so one did not freely give nonliteral meanings to words. The latter were, as much as the former, givens of the *Lugha*, lexical givens.

As cogent as this way of thinking was, it did not convince everyone, and Āmidī, after reviewing the arguments on both sides, ends up suspending judgment. It appears that even he feels a reluctance to bind *majāz*-expressions by hard and fast ties to ancient precedent, thus reducing the creative potential of those wishing to write or speak in "authentic" Arabic. There was a certain cogency to the view that so long as one adhered to ancient *rules* of *majāz* usage one could create *majāz*-expressions that remained truly within the domain of correct *Lugha* usage. This view made it possible to regard the *Lugha* as a repository of expressions laden with literal meanings only, while allowing a speaker to incorporate nonliteral meanings into his usage of these expressions so long as each nonliteral meaning bore the requisite affinity (*ʿalāqa*) with some literal meaning. As we noted above, even in *majāz* usage the literal meaning played a key role.

The issue raised by Muslim scholarship with respect to Shariʿa-based idiomatic expressions entails concerns very much like those that underlie the discussions of *majāz*-expressions.²⁹ When the author of the Shariʿa takes words belonging to the Arabic *Lugha*, such as *sawm* and *salāh*, and gives them specialized meanings peculiar to the Shariʿa, does he thereby remove those words from the domain of the *Lugha*? In other words, does the use of words like *sawm* and *salāh* as idiomatic expressions, technical terms of the Shariʿa, fall under the rubric of bona fide Arabic speech? This issue holds interest for Muslim thinkers mainly on account of its theological ramifications. It is a theological imperative in Islam that the Qurʾān be considered an Arabic document, for it so regards itself. Therefore, any assertion that infringes in any way upon its Arabic character is to be rejected.

For this reason, certain Muslim thinkers were ill disposed to acknowledge the presence of any foreign elements within the Qurʾān. The problem with Shariʿa-based idioms, if they are not counted as part of the Arabic Lugha, is that they represent an intrinsically foreign element. The discussion of this issue is thus linked to the larger discussion of what constitutes the Arabic character of the Qurʾān. Since we shall be taking on this question in a later chapter,³⁰ we will not linger over it here. Suffice it to note simply that those who excluded Shariʿa-based idiomatic expressions from the domain of the Arabic Lugha did not consider the presence of non-Arabic elements in the Qurʾān to be prejudicial to its Arabic character, whereas their opponents did.

Āmidī again suspends judgment. It may be recalled that, while he is willing to include *al-haqīqa al-ʿurfīya* (the ʿurf-based *haqīqa*-expression) along with *al-haqīqa al-wadʿīya* under the broader heading of *al-haqīqa al-lughawīya*, he refrains from doing so in the case of *al-haqīqa al-sharʿīya*, which thus forms a category distinct from *al-haqīqa al-lughawīya*. This no doubt reflects Āmidī's noncommittal attitude on the issue just considered. He presumably could not grant *lughawī* status to Shariʿa-based idiomatic expressions so long as he could not take a clear stand in favor of the inclusion of these expressions within the domain of the Arabic Lugha.

The issues pertaining to synonyms and homonyms may be dealt with together since they involve similar considerations.³¹ Fundamental to both is a concern with what is or is not admissible within the domain of the Lugha. From the discussions of these issues we learn that among Muslim thinkers were some who denied that such a thing as synonyms and homonyms really existed within the Arabic Lugha. Here again appeal was made to the utility or functionality of the Lugha and wisdom of its inventor(s) alluded to earlier, both of which principles were accepted by all parties in the discussion.

The favorite argument of those who denied the existence of synonyms and homonyms was that, given that the primary purpose of the Lugha is to facilitate communication between human beings and thus to foster the cooperative enterprises upon which the well-being of society depends, it is impossible that homonyms and synonyms should exist as part of the Lugha. The argument thus follows the pattern of the familiar *reductio ad absurdum*, a favorite stratagem in the sciences of speculative theology and theoretical jurisprudence: given *x* (which you and we both accept, namely, that the Lugha exists to facilitate communication), then it follows that *y* (which you affirm but we deny, namely, that synonyms and homonyms exist as part of the Lugha) is impossible. The existence of synonyms is impossible because the assigning of a plurality of vocables for a single meaning places a burden upon the speakers inasmuch as they must store a number of vocables in their

memory, thus reducing the effectiveness of each as an instrument of communication. The greater the burden on the memory, the more likely is forgetfulness and, in consequence, a failure in communication. It is intrinsically impossible that the inventor(s) of the Lughā should have allowed such a situation to arise. Furthermore, the number of possible vocables is finite, while the number of possible meanings to which vocables may be assigned is infinite. Given this scarcity of vocables in relation to meanings, the inventor(s) of the Lughā could not have had any justification in squandering several vocables on a single meaning. Similar considerations apply to the homonym. The use of a vocable having two or more meanings can foster confusion in people's minds, thus impeding communication. The wise inventor(s) of the Lughā could not have allowed this to happen.

As we discover throughout Āmidī's writings, one could respond to the denial of the possibility of something either by demonstrating the invalidity of the *reductio*—in which case what was thought to be impossible turned out to be possible after all—or by appealing to empirical evidence of the actual existence of the thing held to be impossible. Āmidī—who enters the arena as champion of both synonymy and homonymy—cites, in defense of the possibility of synonyms, an argument that uses the former ploy. According to this argument, it does not follow from the functionality of the Lughā and wisdom of its inventor(s) that synonyms are impossible, for one can argue that the inventor(s) produced synonyms for the purpose of enhancing eloquence, which is surely among the functions of the Lughā; synonymy, after all, facilitates rhyme, meter, assonance, delicacy of expression, and other ingredients that go into the making of poetry and belles lettres. To this is added an argument that uses the latter ploy. We cannot deny the actual existence of a plurality of lexical codes (*lughāt*). We therefore cannot argue that a plurality of lexical codes is impossible on the grounds that it impedes communication. Since a plurality of lexical codes entails a kind of synonymy inasmuch as it entails a plurality of vocables having one and the same meaning (e.g., dog, kalb, sag, Hund, chien), what is true with respect to the plurality of lexical codes must be true with respect to synonyms.

In his defense of homonyms, it is the second ploy that plays the crucial role. Āmidī cites what he believes to be an absolutely undeniable case of actual homonymy, the word *wujūd*, "existence." His use of this word as a test case requires, however, a familiarity with Islamic speculative theology on the part of his reader. In that science, it is proven that God's existence is categorically different from the existence of all other things, that is to say, created things. And yet we do not hesitate to speak, on the one hand, of God's existence and, on the other, of the existence of created things. We speak of

both so commonly that it makes no sense to regard *wujūd* in one instance (in which it is used with reference to God) as a *haqīqa*-expression and in the other as a *majāz*-expression. This being the case, we can only conclude that *wujūd* is a homonym. This test case proves that homonymity exists within the Arabic Lugha and opens the door to the possibility of other homonyms.

While the subject of synonymity seems not to figure very largely in the discussions of issues related to the interpretation of texts that fill the bulk of pages in works on theoretical jurisprudence, homonymity comes frequently to the fore, as we shall have occasion to see in numerous instances throughout this book. The concept of homonymity, no less than that of the *haqīqa*/*majāz* ambivalence, is an important methodological tool in the enterprise of textual interpretation. Āmidī has good reason to defend such tools against their detractors.

Homonymity and diversion from literal to nonliteral meaning were, of course, sources of possible obscurity of meaning. Should a given expression encountered in a text be taken in its literal sense or in some nonliteral sense? Should a homonym encountered in a text be taken in this literal sense or in that literal sense? The readiness of the great majority of Muslim theorists to accept such equivocality as a feature of the Lugha was facilitated by the understanding of the functioning of the Lugha that they all shared. The Lugha was, after all, understood to be an *instrument*, a tool that a speaker uses for the purpose of communicating (*tabligh*) his thoughts to others in as effective a manner as possible. Thanks to the Lugha, the speaker has before him a repository of expressions laden with preestablished meanings, which he is able to appropriate for his own ends. In the communication process, he need not rely on single expressions as self-contained entities. Every expression that he employs has a context (*qarīna*), and he consciously employs this context along with the expression itself. The context may consist of nonverbal factors connected with the speech act, although generally it is the verbal context that plays the crucial role, a context made up of expressions that are part of the longer discourse in which the speaker is engaged. It is by means of the context that the speaker makes known his precise *intended* (*murād*) meaning. A great many expressions contained within the Lugha lend themselves to usage as *majāz*-expressions. When such usage occurs, the speaker will depend on the context in order to make it evident. In the case of homonymity or other sorts of ambiguity, the context, again, will reveal which of a variety of literal meanings a word “possesses” by virtue of its primordial assignment is the meaning that the speaker has in mind.

The Lugha is not merely an instrument of communication: it is a *perfect* instrument. Though inept speakers may use it ineffectively, the judicious

(*hakīm*) speaker will allow it to function with maximal efficiency, using it to get across to his audience exactly what he wishes to get across. The perfection of the *Lughā* as an instrument of communication makes possible the objectification of intended meaning. Private subjective meanings are, through it, projected into a public arena. Success in communication depends, of course, not only on the intelligence of the speaker; it also depends on the intelligence of the hearer. The objectification of intended meaning amounts to making that meaning available to all who are willing actively to grapple with the expressions presented to them and with the contextual clues that accompany those expressions. This notion of the perfection of the *Lughā* is crucial to the Muslim concept of revelation. Only if full objectification of God's intended meanings through the *Lughā* is possible is revelation, in both the narrow and broad senses of that term (*tanzīl, izhār*), possible.

Āmidī does not, under the heading of *Lughā*-related postulates, deal with all *Lughā*-related issues that arise within the science of theoretical jurisprudence. We shall encounter such issues again as we explore, throughout later chapters, his discussions of matters relating to the interpretation of texts. There we shall find *Lughā*-related issues to be tied to specific hermeneutical problems or principles. What appears under the heading of *Lughā*-related postulates is therefore not meant to be exhaustive. What it gives us is a general picture of Muslim thinking about the *Lughā* and its semiotic functioning together with an overview of issues having import for a range of specific problems in the interpretation of texts. Without this information we would be hard-pressed to make sense of much that follows.

THE INDICATORS OF GOD'S LAW

Once one has gained a firm understanding of the postulates of the science of theoretical jurisprudence (*usūl al-fiqh*), one is in a position to delve into the main subject matter of that science. One may be presumed at this point to understand what knowledge is and how it is acquired and to have embarked upon a quest for knowledge that will have led one to an affirmation of God's existence and possession of seven attributes, including that of speech, and to an acceptance of the claim of the Prophet Muhammad (or of any other true prophet) to have heard from the mouth of an angel words constituting a manifestation or revelation of the divine speech. One may be further presumed to be familiar with the particular type of divine speech that constitutes a categorization (*hukm*) of a human act and to have come to the realization that the various types of categorizations of acts, including those that constitute the rules of law, can never be discerned or established by the unaided human intellect but must rather be derived from divine revelation, the exclusive source of all such rules. Finally, one may be presumed to have a firm understanding of the nature of that mundane phenomenon called the *Lugha*, through which the manifestation of the eternal divine law within the created order is possible.

The subject matter of the science of theoretical jurisprudence is, as we have learned, the indicators (*adilla*) of the rules of law: where are these indicators to be found, how do they function, what qualifications must those who work with them for the purpose of articulating the law possess? As Āmidī puts it, an indicator is that through which a rule of law *becomes manifest* to us. This statement suggests that the rule, in and of itself, is not manifest. The indicators are thus clues to what is *ab initio* hidden from sight. Human scholars—the mujtahids—use them to bring the rules of law to light. It is for this reason that they must understand how the indicators function.

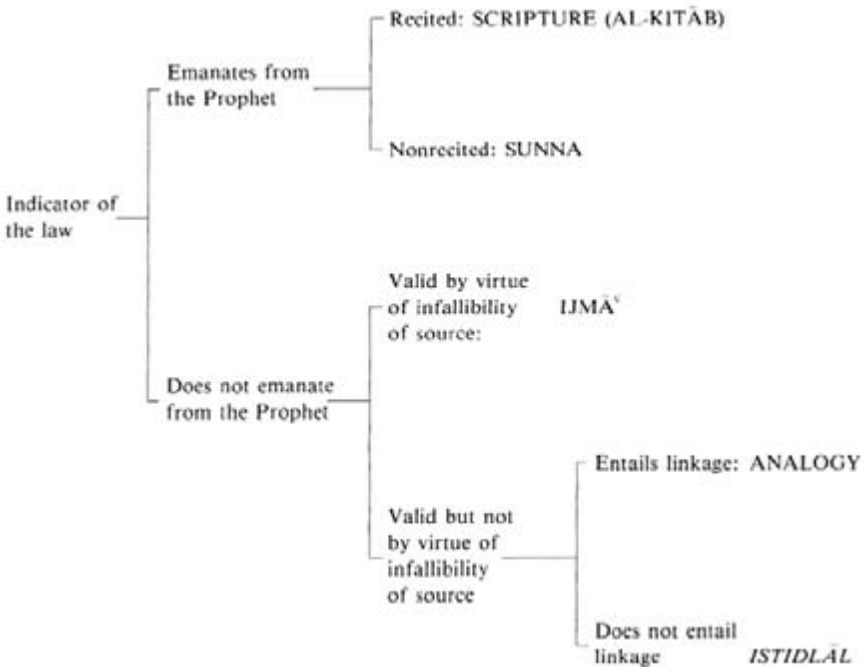
The indicators that Āmidī regards as valid fall into five separate categories: Qurʾān (or Scripture, *al-Kitāb*), Sunna, Ijmāʿ (consensus), analogies

determined on the basis of any of the foregoing, and *istidlāl*. The last of these turns out to be a catch-all category embracing several types of somewhat marginally important indicators not included in the first four categories. In addition to these five categories, there are other categories of indicators that some Muslim theorists regard as valid but that in Āmidī's view are not so. I shall call these the specious indicators.

In the introduction to the second *qā'ida*, Āmidī explicates the five categories of valid indicators by means of the following explication-through-disjunction (*taqṣīm*). An indicator either emanates from the Prophet or does not. If it emanates from the Prophet, then either it is contained within what the Prophet recites, or it is not. If it is contained within what the Prophet recites, it constitutes Scripture (*al-Kitāb*). If not, it constitutes Sunna. If the indicator does not emanate from the Prophet, then its validity is either conditional upon the infallibility of those with whom it originates, or it is not. If it is, the indicator constitutes Ijmā'. If it is not, then if the indicator consists of the applicability to something of a rule that pertains to something else on account of some factor that links the two things together, it constitutes analogy; otherwise, it constitutes *istidlāl*.¹

This classification of indicators may be represented by means of the diagram in figure 6.

Figure 6



the Ijmā^c, considered as the totality of agreed upon statements, acts, and endorsements, may also be said to “contain” indicators of the divine law.

The indicators that fall within the categories of Qur’ān, Sunna, and Ijmā^c all consist of, or are embedded in, words that are preserved intact through time. They thus have a textual character. Divine dicta, prophetic sayings, and verbal expressions of the Ijmā^c are clearly textual: they *constitute* texts. Acts and nonverbalized endorsements do not, of course, constitute texts; however, they were known to us only through verbal reports of witnesses that do constitute texts.

Āmidī groups all five categories of indicators of the law under the general heading of “Sharī‘a indicators” (*al-adilla al-shar‘īya*). He reminds us that he has earlier explained that Sharī‘a indicators are one of two general types of indicators, the other being rational indicators (or, as we called them earlier, rational proofs). When we turn back to the section of the *Ihkām* to which he is referring,² we find that he there speaks of transmitted indicators (*al-adilla al-sam‘īya*) rather than Sharī‘a indicators and that he mentions only the first four of the categories just described, without any mention of *istidlāl*. If we take “Sharī‘a indicators” to be a reference exclusively to indicators of rules of law and of other categorizations of human acts (*al-ahkām al-shar‘īya*), then we are obliged to regard the transmitted indicator as a broader category than the Sharī‘a indicator, the latter being included in the former. A transmitted indicator can bring to manifestation a wide spectrum of matters that are inclusive of, but not limited to, categorizations of acts.

It is important to note that Āmidī, in the same earlier section of the *Ihkām*, includes analogy within the category of transmitted indicators. I have suggested that “transmitted” is tantamount to “textual.” The Qur’ān, the Sunna, and the Ijmā^c are clearly textual, as I have just pointed out; Āmidī subsumes all three under the heading of *matn*, “text,” and I shall throughout this book speak of Qur’ānic, Sunnaic, and Ijmā^cic texts. How can analogy be regarded as textual? The answer, I think, is that, while the rules of law that come to light through analogy are in no sense signified by the language of any text, they are nonetheless rooted in texts, as we shall later see; it may be said that the texts, rather than signifying them, engender them as analogues of rules that they do signify. An analogy is, strictly speaking, something that a text—not a scholar—gives rise to; the scholar merely detects the analogy. It is therefore by virtue of this inseparability of analogy from texts that analogy may be regarded as transmitted and therefore in some sense a textual indicator. Since, however, the term “textual indicator” may suggest to some readers the *language* of the texts considered as an indicator of the law, it will perhaps

be helpful to describe analogy as a *paratextual* indicator. It clearly cannot be subsumed under *matn*.

Although Āmidī nowhere places *istidlāl* in the category of the textual indicator, he does, in the earlier passage, speak of an indicator that is both rational and textual and gives as an example a syllogism: all intoxicating beverages are forbidden; grape wine is intoxicating; therefore, grape wine is forbidden.³ Since syllogisms that are useful in the articulation of the law must be of this type—must contain a major premise grounded in texts—it may be said that such syllogisms are, like analogies, paratextual indicators of the law. We will later see that this type of syllogism is among the indicators placed under the heading of *istidlāl*, so that here is at least one instance of an *istidlāl* indicator that is paratextual. As we shall also later see, the other major type placed under this heading—*istishāb al-hāl*—has the same close relationship to the texts. In the introduction to the second *qāʿida*—the passage under consideration—Āmidī says of both analogy and *istidlāl* that they entail a “laying hold” (*al-tamassuk bi-*) on what the intellect is able to discern in a text, its *maʿqūl*. Thus, all indicators of the law that are not strictly textual are in some sense paratextual: there is no such thing as a purely rational indicator of the Law. This is consistent with the Ashʿarī belief that no rule of law can have a rational foundation.

Any indicator, whether rational or textual, is, let us remember, an instrument of reasoning, that is to say, an instrument whereby the human intellect, in a situation of dialectical encounter, seeks to acquire and uphold knowledge or, where knowledge is not forthcoming, considered opinion. I have suggested earlier that reasoning that employs the textual indicator as its instrument may be described as “reasoning from texts,” and that its aim is to arrive at knowledge derivable only from texts. We shall have to wait until later to get full appreciation of what is entailed in this type of reasoning. Here we may simply note that textual indicators vary in their effectiveness as a basis of argument, that the use of a textual indicator may be subjected to challenge, and that different textual indicators may sometimes contradict each other, requiring that careful reflection be exercised in attempting to determine which takes precedence over the other. The point to be stressed here is that textual indicators are instruments whereby the rules of law “become manifest”: they are instruments whereby, through reflection and disputation, the rules become known or come within the reach of human opinion.

Āmidī goes on to describe the hierarchical relationships that exist between these types of indicators, employing the terms *asl* and *farʿ*, “principle” and “derivative.”⁴ The absolute principle in the entire scheme is the Qurʾān (or Scripture). All other types have, in relation to it, a derivative status. This is

not to say that particular Qur'ānic indicators carry greater intrinsic weight than particular indicators belonging to other categories. The Qur'ān's status as an absolute principle relates to the principal—that is to say, nonderivative—nature of its authority and validity as a repository of indicators. It is principal in relation to the Sunna inasmuch as it represents what God the Legislator actually said (*rāji' ilā qawl allāh ta'āla al-musharri' li'l-ahkām*), whereas the Sunna merely “gives an account of” (*mukhbiratun 'an*) what God said. “What God said” (*qawl allāh*) must be understood here to refer not simply to the eternal divine speech as such—God's *kalām nafsī*—but to that speech as embodied in a mundane speech (*kalām lisānī*) authored by God and deposited initially in the consciousness of the Angel Gabriel, its transmitter to the Prophet. God's own *qawl* carries an authority that is foundational in a way that the Prophet's *khabar* cannot be.

Thus, the Qur'ān does not derive its authority or validity from anything other than itself. Quite the contrary is true of the other types of indicators. There is no reason for accepting the authority of sayings, acts, and endorsements of the Prophet, for example, unless that authority be affirmed by the Qur'ān. This is not to say, however, that the authority and validity of all non-Qur'ānic types of indicators are to be placed on one and the same level within a two-level hierarchy that may be represented by means of the diagram in figure 7.

Figure 7

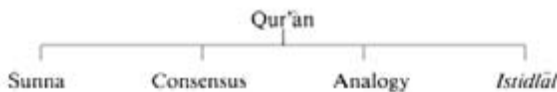
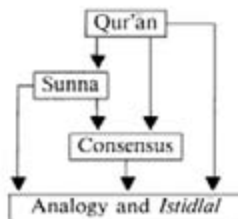


Figure 8



Rather, the line of authority running through the five types of indicators is more accurately represented in figure 8. As this diagram shows, the validity of the Sunna as a supplier of indicators can derive only from the Qur'ān; that of the Ijmā' may derive either from the Qur'ān or from the Sunna; and that of the other two sources of indicators may derive from the Qur'ān, Sunna, or Ijmā'. Thus while the Qur'ān alone enjoys absolute principiality, the Sunna and the Ijmā' have relative principiality, that is to say, a principiality relative to those types of indicators whose validity may be derived from them. The Sunna and the Ijmā' have a derivative status as far as their own authority and validity are concerned. They are thus principal from one perspective and derivative from another.

It is important that we understand the relationship of the five types of indicators of the law to the divine speech. We have noted that in the Ash'arī view all valid rules of law are embedded within God's eternal speech, the internal speech of God that consists of a realm of meaning inseparable from the divine being and is thus fit to be counted among the divine attributes. This being the case, *all* of the indicators of the divine law represent God's eternal speech in some way, since there can be no such rules apart from his speech. It would appear, therefore, that God's eternal speech encompasses a domain of divine meaning that is significantly larger than that expressed through the Qur'ān and Sunna as such. That is to say, alongside the divine speech of which the Qur'ān and the Sunna are the earthly embodiment we are apparently to see another category of divine speech, that which enters human consciousness by way of indicators other than the Qur'ān and Sunna. Since I have reserved the term "revelation" for the "sending down" (*tanzīl*) of the eternal divine speech through the tutorship of the Angel Gabriel, this other entering of the eternal speech into human consciousness cannot, strictly speaking, be called revelation, although one could certainly stretch the meaning of the English word "revelation" to include it. There is no doubt warrant for doing so in Āmidī's own description of indicators as means whereby the rules of divine law "become apparent" (*zuhūr*). Indicators do have a kind of revelatory function. Revelation, after all, is essentially a process whereby eternal meanings latent within the being of God become manifest within the created order. Revelation in this broader sense thus begins, but does not end, with the Prophet. What is distinctive of prophethood is, of course, the experience of being under the tutelage of the Angel, an experience known as *wahy*. Out of this unique experience emerge those indicators that constitute the Qur'ān and the Sunna. But this stage in the revelatory process (*tanzīl*) is hardly efficacious apart from an all-important subsequent stage, the revelation (*izhār*) of divine meaning to vast numbers of human recipients through

the indicators themselves, not only those which constitute the Qur'ān and the Sunna but also the others as well, It is this latter revelation which is in the truest sense the manifestation of the eternal speech of God within the created order. *Wahy* is simply its precondition.

Of the four principal sections (*qawā'id*) of the *Ihkām*, the one that deals with the indicators of the rules of law (the second *qā'ida*) is by far the longest, slightly more than eighty percent of the entire work. From the point of view of the science of theoretical jurisprudence, this was entirely appropriate for the topic that constituted the primary subject matter of that science. Muslim authors were generally not concerned with proportion when they divided their writings into sections, as Western authors tend to be in setting up chapters. The chapter, as we know it (which combines considerations of logical structure with the reader's need for a manageable reading unit), was in fact unknown to them. They were governed entirely by the logical structure of their thought and divided their writings in accordance with elaborate outlines in which the subordination of topic to topic would often be carried to great lengths. The structure of the section of the *Ihkām* on the indicators of the law entails such a high degree of subordination that I shall not seek to adhere to it in my organization of the material to be covered in the following pages but shall, in deference to my Western readership, follow the conventional juxtaposition of chapters. The topics of the ensuing chapters will, however, reflect an order present in Āmidī's outline.

The outline of the second *qā'ida* is as follows. (The outline presented here is by no means complete: it carries the process of subdivision of sections only as far as is necessary to show the correspondence just mentioned.)

I. Concerning the valid indicators of the law

A. Concerning the concept of Scripture

B. Concerning the Sunna

C. Concerning the Ijmā'

D. Concerning matters that are common to the Scripture, the Sunna, and the Ijmā'

1. Concerning the transmission of texts (*isnād*)

2. Concerning textual matters (*matn*)

a. Concerning textual matters that are common to the Scripture, the Sunna, and the Ijmā'

(1) Concerning the indicatory functioning of ordered language (*dalālat al-manzūm*)

(a) Concerning the positive command (*amr*)

(b) Concerning the negative command (*nahy*)

- (c) Concerning the general and the specific expression (*al-ʿāmm wa'l-khāss*)
 - (d) Concerning *takhsīs* (according specific reference to a general expression)
 - (e) Concerning the indicators of *takhsīs*
 - (f) Concerning the unqualified and the qualified expression (*al-mutlaq wa'l-muqayyad*)
 - (g) Concerning ambiguous expressions (*mujmal*)
 - (h) Concerning elucidation (*bayān*)
 - (i) Concerning diversion to nonapparent meaning (*ta'wīl*)
 - (2) Concerning the indicatory functioning of what is "other than" the ordered language of a text (*dalālat ghayr al-manzūm*)
 - b. Concerning a textual matter that is common only to the Scripture and the Sunna (abrogation)
 - E. Concerning analogy (*qiyās*)
 - F. Concerning *istidlāl*
 - II. Concerning what have been thought to be valid indicators but are not
- The correspondence between the items in this outline and the chapters that follow may be shown as follows:
- Chapter 4: I.A.B.
 - Chapter 5: I.C.
 - Chapter 6: I.D.1.
 - Chapter 7: I.D.2.a.(1)(a)(b)
 - Chapter 8: I.D.2.a.(1)(c)(d)(e)(f)
 - Chapter 9: I.D.2.a.(1)(g)(h)(i)
 - Chapter 10: I.D.2.a.(2)
 - Chapter 11: I.D.2.b.
 - Chapters 12, 13, and 14: I.E.
 - Chapter 15: I.F. and II.

THE QUR'ĀN AND THE SUNNA

The Qur'ān and the Sunna both emerged, as we have seen, out of the Prophet's reception of the divine speech. The Qur'ān differs from the Sunna in that it represents the divine speech in its recited form, while the Sunna represents that speech in its nonrecited form. The Qur'ān alone is called Scripture (*al-Kitāb*); in fact, in defining this only absolutely principal source of indicators of the divine law Āmidī takes "Scripture" as his definiendum and includes "Qur'ān" within the definiens. Scripture, he says, is the Qur'ān that has been "sent down" (*al-kitāb huwa al-qur'ān al-munazzal*).¹ The first part of the definiens ("the Qur'ān") excludes other scriptures such as the Torah and the Gospel from the definition; it also excludes divine speech that was sent down to the Prophet Muhammad in nonrecited form. One assumes, in the light of the Qur'ānic censure of the Christians and Jews for having distorted the words of their Scriptures, that Muslim scholars regarded all scriptures as having been sent down in the form of a verbatim recitation. It seems, therefore, that "Qur'ān," in addition to distinguishing Scripture from Sunna by virtue of its descriptive function (deriving from its relation to *qara'a*, "to recite"), also distinguishes, by virtue of its function as a name, the Islamic Scripture from other scriptures. The second part of the definiens—"that has been sent down"—seems to function independently of "Qur'ān"; it excludes the uncreated internal divine speech that belongs to eternity and therefore cannot, by its very nature, be "sent down." We have previously learned that "sent down" means "created." Āmidī explains that Scripture is verbal speech that gives expression to internal speech (*al-mu'abbir 'an al-kalām al-nafsānī*);² therefore it cannot in and of itself be eternal.

He does not include "miraculous" in his definition, even though the miraculous quality of the Scripture of Islam does distinguish it both from other scriptures and from the Sunna. His reason for this omission is that the term "miraculous" does not apply to all *parts* of the Scripture; certain verses or parts of verses do not display a miraculous quality. As we noted earlier,³

miraculousness characterizes the Muslim Scripture *as a totality*. Āmidī also does not include “widely transmitted” in his definiens, as some Muslim theorists did. His reason in this case is that while the Scripture has been “widely transmitted” since the time of Muhammad, its being so does not enter into its essence. Scripture is what it is in the moment of its being sent down and prior to its becoming “widely transmitted.”

Āmidī's definition of the Sunna harks back to the classification of indicators of the law described in the preceding introduction.⁴ The term “Sunna,” he says, applies to those indicators that emanate from the Prophet but belong neither to the category of recited divine speech nor to the category of miraculous speech. This definition displays a notable tendency to associate the Sunna with the indicators of the divine law. In this respect it stands in sharp contrast to the definition of Scripture, which includes no mention of indicators. There is perhaps here a suggestion that, while the sayings of the Prophet were by no means made up exclusively of what may be considered indicators of the law, the Sunna was seen as constituting primarily a source of such indicators, while the Qur'ān was understood to be in large degree a source of information about the history of past nations and prophets and about other matters that were important as a contextual frame for the presentation of rules of law. The very term “Sunna” was after all suggestive of a body of norms, and while the sayings of the Prophet might include a modicum of nonnormative content, the acts and endorsements of the Prophet had little value except as conveyers of normative content. Yet we can perhaps make too much of the contrast between the definitions of Scripture and Sunna.

The issues raised within the science of theoretical jurisprudence that relate exclusively to the Qur'ān, as opposed to issues that bear upon the Qur'ān along with the other repositories of indicators of divine law, are rather few, judging from the *Ihkām*. The major issues, such as the miraculous character of the Qur'ān and its relationship to the divine being (as act or eternal attribute), were considered within the science of speculative theology, not within theoretical jurisprudence. The issues that were raised within the latter seem by comparison inconsequential, at least at first glance. However, on pondering the discussions of these issues as recorded by Āmidī, we find that they have to do with matters of no little theoretical importance.

The first issue taken up by Āmidī is whether the criterion of wide-spread transmission enters into the determination of a valid Qur'ānic indicator.⁵ As we have seen, Āmidī does not admit this criterion into the definition of Scripture. Scripture, let us remember, is what was “sent down” upon the tongue of the Angel Gabriel. What the Prophet recited to his contemporaries and what other humans have recited since is but a copy of the original Qur'ān; it cannot

therefore enter into its definition. On the other hand, what humans recite (or record in the pages of the *mushaf*, the written text) is the link between any given generation and the original Qur'an. Human scholars, in seeking to articulate and formulate the divine law, must therefore draw the indicators of that law from the humanly recited corpus.

This corpus was considered to be divided into two categories: material transmitted (through recitation) on a wide scale and material transmitted on a more limited scale. The latter category was restricted to certain words and phrases not found in the widely transmitted text that were believed to have been included in Qur'anic corpora recited by certain Companions of the Prophet. Abū Hanīfa, we are told, accepted such material as a source of valid indicators of the divine law, whereas al-Shāfi'ī did not. Āmidī gives the example of the word *mutatābī'atin*, which was believed to have been attached, in Ibn Mas'ūd's rendering of Qur'an 5:89, to the word *ayyāmin* to give the meaning "then [he should undertake] a fast of three consecutive days" (instead of simply "then [he should undertake] a fast of three days"). The three days of fasting in question constitute, according to the Qur'an, expiation for breaking an oath. In Abū Hanīfa's view, these three days had to be consecutive, because of the unilinearly transmitted term *mutatābī'atin*, whereas in Shāfi'ī's view the term was to be discounted entirely such that the three days could be separated from each other. Āmidī sides with Shāfi'ī on this issue. The Prophet, he argues, was charged with the responsibility of delivering all Qur'anic material that was revealed to him to a group of people whose number was sufficient to render their collective transmission of this material absolutely authoritative and beyond doubt. The Prophet could not have failed to discharge this responsibility. Therefore any material transmitted by only one person cannot be truly Qur'anic and indicative of the divine law.

Of the remaining issues that pertain exclusively to the Qur'an, three are concerned with whether the Qur'an may or does contain certain types of expressions: meaningless expressions,⁶ *majāz*-expressions, and non-Arabic expressions.⁷ Those who affirmed that the Qur'an *may* include these types of expressions also affirmed that it in fact *does* include such expressions and therefore argued from what they believed to be textual facts, undeniable examples of these types of expressions in the Qur'anic texts. Those who affirmed that the Qur'an may not include such expressions argued from principle rather than from fact and were thus constrained to deny the facts that their opponents cited, since to do otherwise would require that the examples given—all of which were taken from the universally accepted Qur'anic corpus—be excluded from that corpus. The category of meaningless expressions embraced all expressions that did not contribute to the overall meaning of a

text. These included expressions that had no meaning whatsoever and were hardly more than mere babble, expressions whose meanings contradicted the meanings of other expressions in the text, and expressions that were superfluous by virtue of the fact that their meanings were carried by other expressions.

The central issue behind the debates over these expressions was the functionality of the language of the Qur'ān. The debates therefore resemble the discussions of whether the *Lughā*—the Arabic lexical code—embraced synonymity, homonymity, and *majāz*-expressions. The Qur'ān must surely measure up to the standard of functionality imposed on the *Lughā* in general. In fact, the Qur'ān must be a model of functionality; its excellence as an Arabic document depends on this. Therefore, if one accepted the expressions under consideration as part of the Qur'ān, one had to show that they in no way compromised its excellence.

Āmidī is persuaded that this cannot be done and that in the interests of the Qur'ān's functionality the facts cited by the opponents must be denied. In dealing, for example, with the supposed example of undeniably meaningless expressions, the so-called mysterious letters that appear at the beginning of certain *sūras*, he postulates that these letters do have a meaning but one not yet known to us. In the same spirit, he denies that the examples of contradictory expressions given entail real contradiction and that the examples of superfluity entail real superfluity. Āmidī also finds himself constrained to deny that the Qur'ān includes non-Arabic expressions. Here the principle he wishes to uphold is that of the Qur'ān's Arabicness, a principle grounded in the Qur'ān itself. Apparently those who acknowledged the presence of non-Arabic expressions in the Qur'ān felt that they did not compromise its essentially Arabic character. Āmidī, however, prefers to follow the safer course of treating words such as *mishkāh*, *istabraq*, *sijjīl*, and *qistās* as part and parcel of the Arabic *Lughā*, even though these words *also* exist in the lexical codes of other languages.

On the issue of *majāz*-expressions, Āmidī stands on the other side of the fence, affirming rather than denying their presence in the Qur'ān. This was, Āmidī tells us, the position of all Muslim theorists except the *Zāhirīs* and a sect of the *Shī'īs* known as the *Rawāfid*. It is significant that the discussion of whether *majāz*-expressions exist within the Qur'ān was independent of the discussion of whether such expressions exist within the *Lughā*. In the latter, the principle of functionality played a central role. In the former, that principle no doubt entered in, although in Āmidī's account principles of a more strictly theological nature play the crucial role. The opponents take the view that the presence of *majāz*-expressions in the Qur'ān would imply that God is

a speaker of falsehoods, or that he is incapable, or that he has shifted (*mutajawwiz*) from one thing to another: he is a speaker of falsehoods since he is by virtue of his use of *majāz*-expressions open to the charge that his statements are not, if taken literally, true (for example, if someone says, "That man is an ass," his statement, taken literally, is not true); he is incapable since such usage is indicative of an inability to find an appropriate *haqīqa*-expression; and he has shifted from one thing to another since such shifting is entailed in the very notion of usage of expressions in the *majāz* mode (*jawāz*). But God may not be described as any of these things. Āmidī's response is to show that when a speaker is using a *majāz*-expression he cannot be judged truthful or untruthful at the level of literal meaning, that such usage implies, not inability, but greater ability, and that the term "shifting" is disallowed only because it might give the impression that God is "shifty" or indulgent in respect to evil.

Another issue pertaining exclusively to the Qur'an that Āmidī records relates to the meaning of two Qur'anic terms, *muhkam* and *mutashābih*.⁸ These appear in Qur'an 3:7, where they are used to designate two kinds of Qur'anic verses (*āyāt*). The opinions of Muslim theorists, we learn, varied as to how these terms are to be understood. Some took *muhkam* to be a reference to unambiguous verses and *mutashābih* to ambiguous ones; others understood *muhkam* as referring to prescriptive verses and *mutashābih* as referring to narrative verses. Still others opposed *muhkam*, not to *mutashābih*, but to *fāsid*, with the meanings of "coherent" (*muhkam*) and "faulty" or "incoherent" (*fāsid*). It is worth noting in this connection that those writers, such as Āmidī, who followed the speculative approach to the study of theoretical jurisprudence did not incorporate the terms *muhkam* and *mutashābih* into the technical jargon of their science, notwithstanding the importance that these terms have within the science of Qur'anic interpretation (*tafsīr*).⁹ Perhaps they avoided them because of their very Qur'anicity, a characteristic that was bound to assure any term a somewhat volatile career.

A last issue—whether the phrase "in the name of God the Merciful, the Compassionate" that appears at the beginning of each *sūra* is part of the Qur'an itself¹⁰—raises considerations that I shall not take up in the present context.

We may now turn to issues that pertain exclusively to the Sunna. The first point to be noted is that all such issues pertain to the acts and endorsements of the Prophet. That is to say, there are no issues—at least as far as Āmidī is concerned—that pertain *exclusively* to the sayings of the Prophet; all issues pertaining to those sayings also pertain to the other repositories of indicators of the divine law, the Qur'an and the *Ijmā'*. These latter issues all have to

do with the transmission and semantic functioning of the *textual* indicators regardless of type.

As we delve into Āmidī's account of issues pertaining to acts (*af'āl*) and endorsements (*taqārīr*) of the Prophet, we soon discover that it is the acts of the Prophet that receive the lion's share of his attention. In the 1914 edition of the *Ihkām*, thirty-nine pages are devoted to issues pertaining exclusively to the Sunna. Of these, scarcely more than two are concerned with the Prophet's endorsements. The rest deal mainly with the Prophet's acts. The scant attention paid to the Prophet's endorsements may be due to the problematic nature of this indicator of the law. Āmidī's discussion of the subject suggests that prophetic endorsements were extrapolated mainly from the Prophet's silence, and silence is in the best of circumstances a difficult thing to interpret. Furthermore, as indicators of the law prophetic endorsements had a rather limited function. The most one could learn from them was that a given act was not forbidden. A prophetic endorsement thus yielded information that was primarily negative, functioning as a kind of *nihil obstat*. Such an endorsement could never be used to establish that an act is obligatory. Prophetic acts, on the other hand, are a potential source of such information, in the view of most Muslim jurists. For this reason, they can be much more productive than endorsements as indicators of the law.

It is in connection with his acts that the Prophet assumes the all-important role of exemplar or paradigm for the Muslim community; and it is only to the extent that his acts are paradigmatic that they constitute indicators of the law. Consequently, before proceeding to deal with issues relating to the functioning of prophetic acts as indicators of the law, Āmidī is obliged to deal with a couple of preliminary matters that pertain to the Prophet's role as a paradigm. The first of these is the subject of the Prophet's impeccability. Although this subject bears upon all prophets, the Muslim thinkers are concerned with it primarily as it bears upon the Prophet Muhammad, and I shall reflect that point of view in what follows. The importance of the subject lies in the fact that only if the Prophet is in some respect impeccable can his acts be regarded as paradigmatic. Or, to state the same point slightly differently; only if the Prophet is in some respect impeccable can his acts be regarded as part of the Sunna.

The notion of prophetic impeccability is expressed in Arabic by means of the phrase *al-ʿisma ʿan al-maʿāsī*, which means "the state of being prevented from committing acts of disobedience." The preventer is, of course, God. Impeccability thus arises from a preventive act, or series of preventive acts, of the Creator. We noted earlier that obedience, according to most Muslim jurists, consists of compliance not only with the divine law (the

Shari'ā categorizations of acts as obligatory or forbidden) but also with the divine exhortations (the Shari'ā categorizations of acts as recommended or disapproved); only the neutral act does not entail obedience (or, for that matter, disobedience). Disobedience, accordingly, is noncompliance both with divine law and with divine exhortations. If the Prophet is truly rendered incapable of disobedience, then we may assume that all that he does falls under the heading of the neutral, the recommended, or the obligatory and that all that he refrains from doing falls under the heading of the neutral, the disapproved, or the forbidden. The Prophet's behavior therefore is a potential source of information about what constitutes divine law and exhortation. Given a particular act of the Prophet, we may ask which of the three categories it belongs to, and if we are able to determine that it belongs to the category of the obligatory, we have established that it is an indicator of the law. The same procedure applies to the Prophet's refraining from an act.

The phrase "acts of the Prophet" as used to designate a category of indicators should no doubt be understood in the widest possible sense, inclusive not only of the performance (*fi'l*) of acts but also of the nonperformance (*tark*) of acts. As we noted earlier, *tark* is a kind of act, the act of refraining from doing something. *Tark* can, as much as *fi'l*, constitute obedience and its contrary disobedience. One complies with divine requirements and recommendations through *fi'l* and with divine disapprovals and prohibitions through *tark*. Strictly speaking, sayings and endorsements of the Prophet fall within the category of acts of the Prophet. Each saying of the Prophet entails an act of speaking and each endorsement an act of endorsing. As we shall see, Muslim disputation was primarily concerned with endorsement through silent consent, but even silence can be construed as a human act. When acts of the Prophet (inclusive of both *fi'l* and *tark*) are juxtaposed with sayings and endorsements, we must therefore understand the term "acts" to refer to nonverbal acts that do not constitute endorsements. In the case of sayings of the Prophet, the focus of attention is upon the effect of an act of speaking, words that are heard and transmitted to others; in the case of endorsements of the Prophet, the focus is upon acts or sayings of persons other than the Prophet.

The fact that impeccability is discussed as an issue pertaining principally to acts (in the qualified sense just indicated) of the Prophet should not be taken to mean that impeccability has no bearing on sayings of the Prophet. It has indeed such a bearing, but it is not in regard to that bearing a topic on the agenda of Muslim disputation. It is not, in other words, an issue insofar as it bears upon the sayings of the Prophet; for the impeccability of the Prophet with respect to what he conveys verbally in the way of indicators of the divine

law is identical with his truthfulness as a prophet of God, and this truthfulness is assured by confirmatory miracle. Truthfulness is, after all, a property of statements, not of nonverbal acts; therefore, only the Prophet's impeccability *qua* truthfulness of the verbal statement, that is to say, *qua* infallibility, is beyond discussion. The miracle assures us that the Prophet would never disobey God by falsifying the divine speech he was commanded to convey (*tablīgh*) to mankind, whether in recited or in nonrecited form.

Āmidī's account of the spectrum of opinions concerning the impeccability of the Prophet within the realm of action indicates the following. The Shī'īs considered the impeccability of the Prophet to extend throughout his lifetime, beginning at birth, whereas most Sunnīs saw it as beginning with his call to prophethood. Shī'īs also regarded the impeccability of the Prophet as covering all his acts, whereas Sunnīs considered that the Prophet could commit certain minor acts of disobedience. A radical branch of the Khārījī sect even contended that the Prophet was capable of lapsing back into unbelief after his call to prophethood (even though in fact he did not). Among Sunnīs, there was agreement that the Prophet could not intentionally commit an act of disobedience that vitiated the truthfulness of his claim to be a prophet. There was disagreement, however, as to whether he could commit such an act unintentionally. (It may be observed in passing that intentionality is not a factor either in obedience or in disobedience; only compliance or noncompliance with the divine law in the realm of objective action enters in.) As for acts of disobedience that did not vitiate the Prophet's truthfulness, he was incapable of such acts if they were of a serious nature (*kabīra*), or if they were not serious but implied baseness of character (for example, stealing an object of little value). Disagreement arose as to whether the Prophet could commit such acts when they neither were of a serious nature nor implied baseness of character. The majority admitted that he could. A few Mu'tazilīs, however, insisted that he could do so only unintentionally.

Āmidī's discussion of the impeccability of the Prophet in the *Ihkām* is a summary of a much longer discussion in the *Abkār al-afkār*. It is clear that he considers the subject as belonging within the province of speculative theology rather than of theoretical jurisprudence. One gathers that, strictly speaking, the proper place for the summary would have been within the section of the *Ihkām* (and the *Muntahā*) on theological postulates, but that Āmidī wishes his reader to become acquainted with the subject of prophetic impeccability as a prelude to delving into discussions of issues pertaining to acts of the Prophet, which clearly belong to the agenda of theoretical jurisprudence. Those issues all have to do with the functioning of the Prophet's acts as indicators of the divine law. Before discussing them, therefore, one

had to know *which* acts of the Prophet could function as such indicators. This required a familiarity with the subject of prophetic impeccability. For this reason Āmidī calls his discussion of this subject an “introduction” (*muqaddima*) to his main discussion.

Also included under the heading of “introduction” is a brief discussion of the four possible stances that a person may take toward another person.²² This is the second of the two preliminary matters, mentioned above, that Āmidī is obliged to deal with. One may, first of all, *imitate* another. In this case one acts or refrains from acting in accordance with the example of another for no other reason than that the other person so acted or refrained from acting. Second, one may *follow* another. This is similar to imitation except that following entails not only acting in accordance with the example of another but also acting in accordance with the verbal directives of another. Third, one may *agree with* another. In this case, one acts as another does or affirms what another affirms but not because the other so acts or affirms what he affirms. Fourth, one may *be at variance with* another by not complying, either in word or deed, with what the other does or says. Clearly, the first two of these are stances that one would take toward the Prophet. Imitation is a stance that relates to the Prophet's acts, following a stance that relates to his sayings as well as his acts. Imitation is thus the stance that has the most direct bearing upon issues presently under consideration: when one imitates the Prophet, one takes the Prophet to be an exemplar, his acts to be a paradigm. As for the third and fourth stances, these are appropriate only between ordinary human beings.

Having completed his introductory discussions, Āmidī turns to the issues that are the proper business of theoretical jurisprudence—issues having to do with the functioning of prophetic acts as indicators of the divine law. Only prophetic acts that may be regarded as paradigmatic for other human beings can have this function. To say that an act of the Prophet is paradigmatic is to say that it is representative of what is obligatory, recommended, or neutral not only for the Prophet himself but for others as well. Only if it is representative of what is *obligatory* both for the Prophet and for others as well can we regard it as a *legally significant paradigm*, an indicator of the law, since the categorization of an act as recommended or neutral does not, strictly speaking, constitute law, as we noted in the introduction. One can speak of the Prophet's nonperformance of an act in the same way. To say that the Prophet's nonperformance of an act is paradigmatic is to say that it is representative of what is disapproved or forbidden not only for the Prophet himself but for others as well. If it is representative of what is forbidden both for the Prophet and for others, then it constitutes an indicator of the law, that is to say, a *legally significant paradigm*.

From the discussion of the impeccability of the Prophet we have learned that, at least according to Sunnī opinion, not all acts of the Prophet are necessarily paradigmatic. Since it is possible for the Prophet to commit certain minor acts of disobedience, one must scrutinize the Prophet's acts to determine whether they fall into this category or not. Only acts that do not fall into this category are *eligible* to be considered paradigmatic. But are even these acts necessarily paradigmatic? From Āmidī's continuing discussion we learn that they are not.¹² At least some Muslim theorists—Āmidī does not mention names—considered no prophetic acts to be paradigmatic, preferring to rely entirely on the words of the Prophet.

The majority, however, held that prophetic acts that do not entail disobedience are paradigmatic provided they meet three conditions. I shall state these conditions in a manner that brings out their significance for the strictly juristic enterprise of formulating the law. First, there must be nothing that indicates that the act is related in a special way to the Prophet's mission such that it is obligatory for him but not for us. Second, there must be nothing that indicates that the act is merely substantiating a previous verbal declaration to the effect that it is obligatory, since in that case the declaration, not the act itself, is the true indicator of the divine law. And third, the categorization of the act as obligatory must be known from revelation or from a divinely authorized source. The third condition presupposes two things: that an act of the Prophet cannot be paradigmatic in a legally significant way—cannot function as an indicator of the divine law—unless it be known that the act was obligatory for the Prophet as opposed to recommended or morally neutral (or, in the case of nonperformance, that it was forbidden, as opposed to disapproved) and that this cannot be known from the act itself but only from some additional indicator. It is important to understand that this indicator shows us that an act was obligatory *for the Prophet*, not for us; it is the role of the act itself *as a paradigm* to show us that the act is obligatory for us as well. If the additional indicator supplied this further information, there would be no room for the act itself to function as an indicator.

Āmidī upholds the majority view. He is certain that *some* acts of the Prophet are paradigmatic and agrees that these acts can be determined by applying the aforementioned conditions. That some acts of the Prophet are paradigmatic is, for him, evident from certain Qur'ānic verses, namely, 33:37–38 ("So when Zayd had accomplished what he would of her, then we gave her to you in marriage, so that there should not be any fault in the believers, touching the wives of their adopted sons, when they have accomplished what they would of them"), 3:31 ("Say: If you love God, follow me, and God will love you"), and 33:21 ("You have had a good example in God's

Messenger for whoever hopes for God and the Last Day”) as well as from the consensus of the Companions of the Prophet to the effect that certain acts of the Prophet, such as his kissing of the Black Stone and his fasting practices, were paradigmatic.

The insistence that an act of the Prophet can function as a paradigm, as an indicator of the law, only conjointly with an additional indicator that shows the act to have been obligatory for the Prophet represents a particular posture on the issue of whether the acts of the Prophet are self-sufficient as indicators of the divine law. This issue, it should be noted, was raised only in regard to acts that were not purely routine. There was general agreement that routine acts such as standing up or sitting fell into the neutral category and that one could be sure of their neutrality without depending on an additional indicator.

With respect to nonroutine acts, opinion was divided. Some jurists—*Āmidī* includes among them “the Hanbalis”—maintained that all such acts of the Prophet were self-sufficient as indicators of the law: one could, without the help of an additional indicator, know that these acts were obligatory for the Prophet and then, assuming that the first of the three conditions mentioned above had been met, extrapolate from this that they were obligatory for others as well. This position clearly reflected a rigorist mentality, since it tended to expand the sphere of law by making nonroutine acts of the Prophet a straightforward source of law. Other jurists took the opposite point of view: nonroutine acts of the Prophet are self-sufficient indicators, not of the law, but of categorizations of acts that lie outside the sphere of law. In this view, we can, without the help of an additional indicator, know such acts to have been recommended for the Prophet and therefore for us; or, as some others preferred to maintain, we can know such acts to have been neutral for the Prophet and therefore for us. This latter group in effect treated nonroutine acts of the Prophet as no different from routine acts. Still others insisted upon a distinction between nonroutine acts that had an obvious pious intent and those that did not; emulation of the latter was, in their view, actually forbidden, since these acts could entail minor disobedience on the part of the Prophet. As for acts of obvious piety, these were self-sufficient indicators of the law. Finally, some theorists—presumably the majority—took the view that a nonroutine act of the Prophet is a self-sufficient indicator neither of the law nor of a categorization of a human act as recommended or neutral. This view led logically to the demand for an additional indicator. Thus it was only in conjunction with such an indicator that a nonroutine act of the Prophet could function as an indicator of the law.

This last view is *Āmidī*’s. Without additional indicators we can, he observes, only make vague generalizations about nonroutine acts of the

Prophet. If they are obviously acts of piety, then clearly the performance of the acts is to be preferred over nonperformance. Otherwise, all we can say about these acts is that there is nothing objectionable about them. But generalizations of this sort are not of much use to the jurist who is seeking to formulate the law.

Thus far Āmidī has been concerned with the functioning of single acts of the Prophet as indicators of the divine law. But every act of the Prophet exists within a context of other acts as well as within a context of sayings of the Prophet. Sometimes a contradiction will appear to arise between one act and another or between an act and a saying. (Contradictions between sayings of the Prophet are dealt with elsewhere in the *Ihkām*.) What is one to do in the presence of such contradictions? The essential problem is one of determining when a real contradiction exists, as opposed to an apparent contradiction. The problem has important ramifications: where a genuine contradiction exists between two indicators, the rules of law that they bring to light cannot *simultaneously* be operative; rather, one must be presumed to abrogate or restrict the application of the other. (In a restriction of application, one rule functions as an exception to the other. This relationship will be explored more fully later.) But abrogation and restriction of application imply a chronological order; only the one of two indicators that arises after the other can abrogate or restrict. Therefore, chronology must be taken into account.

Āmidī begins with the problem of apparent contradiction between one act of the Prophet and another (or, to be more exact, between the rule of law exhibited by one act of the Prophet and that exhibited by another act).¹³ Let us suppose that we have, on the one hand, a particular instance of fasting on the part of the Prophet, and on the other hand, a particular instance of eating. These two acts are contraries, but they are not necessarily contradictory. The Prophet is known both to have fasted and to have eaten; immediately to suppose a contradiction in the case of the two instances in question would be the height of rashness. In order to determine whether a contradiction exists, we must first know the chronological order of the two acts and the precise legal status at least of the earlier act *for the Prophet*. As we have learned, this information must, according to the majority view, be acquired through indicators other than the act itself.

Assuming that we know the act of fasting to have occurred first and to have been obligatory for the Prophet and the act of eating to have occurred later, we must have two further items of information in order to determine whether a real contradiction exists: we must know whether the earlier act (fasting) was one that the Prophet was charged to repeat on a regular basis or one that the community was charged, in emulation of his example, to repeat

on a regular basis. If either of these holds true of the earlier act, then any subsequent contrary act (eating) that occurs at a time when the earlier act was to be repeated truly contradicts it and must be regarded as either abrogating the rule that it exhibits or restricting the application of that rule. If neither holds true of the earlier act, then there can be no genuine contradiction. When an act is to be repeated, whether by the Prophet or both by him and by the community, the rule of law it exhibits has a general applicability (*ʿumūm*) that makes possible the subsequent occurrence of a truly contradictory act. This is not the case if the earlier act is not one that was to be repeated on a regular basis. To be more specific in the case of fasting: we know from clear indicators that fasting was to be repeated every year during the daytime hours of Ramadān. Therefore, if the Prophet had ever eaten during those hours, his act—the contrary of fasting—would have to be regarded as contradicting, and therefore as abrogating, or restricting the application of, a rule exhibited by his earlier act of fasting.

Contradiction between an act of the Prophet and a saying of the Prophet entails a much more complex set of considerations.¹⁴ Here again we depend on additional indicators to tell us certain things about the act. Āmidī sets forth the possibilities as follows: (1) The indicators tell us neither that the Prophet was to repeat the act (that is to say, perform it on a regular basis at the same time as the original act) nor that the community was to follow his example. (2) The indicators tell us both that the Prophet was to repeat the act and that the community was to follow his example. (3) The indicators tell us that the Prophet was to repeat the act but not that the community was to follow his example. (4) The indicators tell us that the community was to follow the Prophet's example but not that the Prophet was to repeat the act. Following the Prophet's example, it seems, entails repeating the act in question; however, as the fourth possibility shows, it does not necessarily entail the Prophet's repeating the act. It is the original act per se that is the object of the community's emulation, not the repetition of the act, although Āmidī's discussion implies that emulation itself is something that is to be repeated. In reflecting on these four possibilities, we can see that the rule of law exhibited by the Prophet's act lacks general applicability—that is to say, applicability to an indefinite number of cases involving the same act—in the case of the first possibility and that it has general applicability in the case of the other three possibilities; in fact, in the case of the second possibility it has general applicability on two accounts.

Alongside these considerations that relate to the act of the Prophet are considerations that relate to the saying. We must know whether the saying pertains to the Prophet alone, to the community alone, or to both the

Prophet and the community. That is to say, if we have a saying of the Prophet that indicates that fasting is obligatory during Ramadān, we must know *for whom* it is obligatory. Is it obligatory only for the Prophet, or only for the community, or for the Prophet and the community together?

Thus acts of the Prophet may be classified into four distinct types and sayings into three types; and if we combine these two sets of types, we have twelve possible juxtapositions of act and saying:

1. An act for which there is no indicator showing either that the Prophet was to repeat the act on a regular basis or that the community was to follow his example vis-à-vis a saying that pertains only to the community.
2. An act for which there is no indicator showing either of the above vis-à-vis a saying that pertains only to the Prophet.
3. An act for which there is no indicator showing either of the above vis-à-vis a saying that pertains both to the community and to the Prophet.
4. An act for which there is an indicator showing both that the Prophet was to repeat the act on a regular basis and that the community was to follow his example vis-à-vis a saying that pertains only to the community.
5. An act for which there is an indicator showing both of the above vis-à-vis a saying that pertains only to the Prophet.
6. An act for which there is an indicator showing both of the above vis-à-vis a saying that pertains both to the community and to the Prophet.
7. An act for which there is an indicator showing that the Prophet was to repeat the act on a regular basis but not that the community was to follow his example vis-à-vis a saying that pertains only to the community.
8. An act for which there is an indicator showing the same as the above vis-à-vis a saying that pertains only to the Prophet.
9. An act for which there is an indicator showing the same as the above vis-à-vis a saying that pertains both to the community and to the Prophet.
10. An act for which there is an indicator showing that the community was to follow the example of the Prophet but not that the Prophet was to repeat the act vis-à-vis a saying that pertains only to the community.
11. An act for which there is an indicator showing the same as the above vis-à-vis a saying that pertains only to the Prophet.
12. An act for which there is an indicator showing the same as the above vis-à-vis a saying that pertains both to the Prophet and to the community.

These twelve juxtapositions may be represented by means of the diagram in figure 9.

Figure 9

		ACT OF THE PROPHET			
		No indicator shows either that the Prophet was to repeat the act on a regular basis or that the community was to follow his example	An indicator shows both that the Prophet was to repeat the act on a regular basis and that the community was to follow his example	An indicator shows that the Prophet was to repeat the act on a regular basis but not that the community was to follow his example	An indicator shows that the community was to follow the Prophet's example but not that the Prophet was to repeat the act on a regular basis
SAYING OF THE PROPHET	Saying that pertains only to the community	1	4	7	10
	Saying that pertains only to the Prophet	2	5	8	11
	Saying that pertains both to the community and to the Prophet	3	6	9	12

Āmidī proceeds to sort out those juxtapositions that entail genuine contradiction from those that do not. In some cases he indicates a difference of viewpoint among Muslim theorists. The first, sixth, seventh, eighth, and tenth juxtapositions are the most clear-cut. In the first and seventh an act of the Prophet that has no bearing whatsoever on the community is juxtaposed with a saying that has such a bearing. Thus if the saying indicates that the community (but not the Prophet) is under obligation to fast at a specified time and the Prophet eats at that time, there is no contradiction. Here is a case where saying and contrary act do not entail a contradiction in respect to the rules they display. In the eighth juxtaposition, on the other hand, a contradiction clearly exists. If we imagine, for example, that the Prophet was under obligation to fast regularly at a specified time but the community was not and that the Prophet later stated that he was not under obligation to fast at that time, or vice versa (with the saying occurring before the act), then we have a case where the contrary acts of fasting and eating are clearly contradictory. Much the same obtains with respect to the sixth and tenth juxtapositions. If, on the one hand, the Prophet is under obligation to fast regularly at a specified time and the community is under obligation to follow his example and, on the other, the Prophet declares that neither he nor the community

is under obligation to fast in the manner just indicated—or if the Prophet declares both himself and the community to be under obligation so to fast but then later eats at the specified time and we find an indicator that shows that his eating regularly at that specified time is permissible for him and for the community—clearly we have a real contradiction. A similar hypothetical example can easily be provided for the tenth juxtaposition. In all these cases of contradiction, one of the two indicators (whether the act or the saying) must be presumed to abrogate the other. The process of determining which indicator abrogates the other must take chronology into account: the later will always abrogate the earlier.

In the remaining juxtapositions of contrary act and saying, chronology enters into the determination of whether a real contradiction exists (not merely into the determination as to which abrogates the other). Thus, in the case of the second juxtaposition, if the act occurs first there is no real contradiction, but if the saying occurs first there *may be* a real contradiction, depending on whether a certain theological principle—to be explained immediately—holds true or not. We may imagine, for example, that the Prophet, on the one hand, fasts at a certain time without there being an indicator showing that he was to fast regularly at that time or that the community was to follow his example and then, on the other hand, declares that eating is permitted (or recommended or obligatory) for him at that time. If the act comes first, there is no contradiction between it and the saying, since at the moment when the Prophet uttered the saying he was not under obligation to fast at the time specified such that the saying must be regarded as contradicting it (and therefore as abrogating, or restricting the application of, the rule exhibited in it). The rule exhibited in the act of fasting in this case does not have the general applicability (*‘umūm*) that would make it susceptible to being contradicted. If the saying occurs first, however, then whether or not there is a real contradiction depends on the position one takes on the theological issue of whether a creature may be under a charge (*mukallaf*) while he is unable to fulfill the charge. If, for example, the Prophet states that he is under obligation to fast at a particular time in the future (for sayings must always relate to future times, even if in the immediate future, just after the saying has been uttered) and then eats at the specified time, his eating contradicts the earlier saying only if the rule indicated by the saying is operative at the time of his eating. All Ash‘arī theologians agreed that at the time of the Prophet’s eating—or performing any other act—he could not have done otherwise. If, therefore, the earlier rule that charged him to fast was operative at the time of his eating, the Prophet was in effect being charged with something impossible for him actually to carry out. If one’s theology permitted

one to accept this—as did Āmidī's Ash'arī theology—then one could maintain that a real contradiction existed. If not, one was constrained to affirm that the earlier rule ceased to be operative at some point before the Prophet's eating and that no real contradiction existed. The other juxtapositions also raise these same considerations of chronology and theology.

In the case of juxtapositions in which the act (by virtue of the community's being charged to emulate it) or the saying or both have a bearing upon both Prophet and community, the process of determining whether a real contradiction exists can entail further complexities beyond those considered thus far. We may consider the example of the ninth and fourth juxtapositions. In the case of the ninth, one must consider chronology first of all, as previously indicated. If the act comes first, there is no contradiction between it and the saying. But if the saying comes first, then one must take into account the *dual bearing* of the saying, that is to say, its bearing upon both Prophet and community. In respect to its bearing upon the community, the saying stands in no real contradiction with the later act, for the act has no bearing upon the community. Since the act *does* have a bearing upon the Prophet, it stands in an altogether different relationship with the saying considered in respect to the latter's bearing upon the Prophet. Here a real contradiction *may* exist, depending on the position one takes on the theological issue mentioned above. In the case of the fourth juxtaposition, we have the reverse of the situation just described: on the one hand, an act that has a bearing both upon the Prophet and upon the community and, on the other, a saying that bears only upon the community. If the act comes first, then it is in contradiction with the saying in respect to its bearing upon the community, but not in respect to its bearing upon the Prophet.

There is yet one further complexity in the process of determining whether a real contradiction exists between an act and a saying of the Prophet, one relating to chronology. We have noted that the chronological order that obtains between an act and a saying of the Prophet can make a difference in the determination of whether a contradiction exists. But what if this chronological order is unknown? The chronological factor, after all, requires an indicator, and such an indicator may not be found. Here the opinion of Muslim theorists is again divided. Some considered that the saying should be given precedence over the act, that is, that the rule indicated by the saying should be treated as operative and that indicated by the act should be treated as inoperative; others considered that such precedence should be given to the act. Both positions, in other words, favored a presumption of noncontradiction. Other theorists, however, preferred to suspend judgment until such time as an indicator of chronological order could be found. This is Āmidī's position.

I have just exposed the reader to one of the most tedious and demanding discussions in the entire *Ihkām*. I have chosen not to deal at length with each of the twelve juxtapositions of prophetic act and saying lest my own presentation become unduly taxing. Since the purpose of this book is not to familiarize the reader with all the details of the discussions that arose within Islamic theoretical jurisprudence but rather to provide an overview of the principal issues and of the principal considerations raised in the discussion of those issues, I shall be satisfied if the reader feels that he or she has gained a reasonably accurate general understanding of what was at stake in the discussions just surveyed. It is important to bear in mind that the Muslim jurists were interested as much in the interrelation between indicators as in the impact of indicators viewed in isolation. This broader interest will become a persistent theme in the pages ahead.

We have, finally, to consider the subject of the Prophet's endorsements (*taqārīr*), a subject to which Āmidī, as we noted, pays only scant attention. An endorsement, we have observed, yields negative information: it tells us that an act is neither forbidden nor disapproved, thus providing evidence that it is at least neutral or permitted. Āmidī's discussion of endorsements is confined to the question of whether the Prophet's silence constitutes an endorsement.¹⁵ To state the question more precisely: if someone in the Prophet's lifetime did something and the Prophet was aware of his act, yet said nothing about it, what are we to make of his silence?

According to Āmidī, the answer depends on a number of factors. If the Prophet had at some previous time forbidden such an act, then either he was capable of expressing his denunciation of the act or he was not. If he was capable of expressing his denunciation, then if he knew that the individual would stubbornly persist in doing the act and in believing the act to be permissible his silence cannot be construed to be an endorsement of the act and an abrogation of his earlier prohibition. If he did not know this about the individual, his silence in that case does indicate endorsement and abrogation regardless of whether the individual was aware of the earlier prohibition or not. If this was not so—that is, if the earlier prohibition remained in effect in this situation—then we would have to interpret the Prophet's silence as a delaying of a denunciation of the act in question. But it is not possible for the Prophet to delay such a denunciation, since his silence would mislead people into thinking that the prohibited act had been made permissible. If, on the other hand, the Prophet had not previously declared the act forbidden, then his silence, assuming that he was capable of expressing his denunciation if such was required, does indicate that the act is neutral—that is to say, permissible—especially when the silence is accompanied by some sign of

contentment. If this was not so, then the silence would be forbidden for the Prophet, and, again, we would have a delaying of a pronouncement beyond the time when it was called for.

Thus we see that just as the acts of the Prophet depend, in their functioning as indicators of the divine law, upon contextual factors, additional indicators that supply some missing but vital information, so, too, with the silence of the Prophet in the face of acts of others. In this latter case, the contextual factors lie in part within the realm of the Prophet's subjective experience. One wonders what sort of indicator would tell us whether or not the Prophet was capable on a given occasion of expressing his denunciation or whether or not he knew that the person in question would persist in his action or in believing the act to be permissible. Presumably one would need in the latter case nothing less than a statement from the Prophet himself or from someone else who could be relied upon to know the Prophet's mind. In the former case one would need information to the effect that the Prophet was on the given occasion distracted by some pressing business or suffering from a temporary loss of speech. But how abundant would indicators such as these be in the texts? We seem here to be approaching difficult terrain. In any case, the Prophet's silence is at most an indicator only of what is morally and legally neutral. It is not an indicator of what is obligatory, much less of what is forbidden. Its usefulness in the business of articulating the law is thus marginal at best.

THE IJMĀ^c

That the Qur'ān and the Sunna were bona fide indicators of the law of God was a basic tenet of Islam that no Muslim jurisprudent who was serious in his claim to be a Muslim could deny. In the Ash'arī view, both were earthly manifestations of the eternal divine speech; no one could, therefore, gainsay their authority and their preeminence among the various categories of indicators of the divine law. They alone constituted *nass*. Controversies that might arise among the Muslims in connection with them could never strike at the heart of Muslim devotion to these two repositories of divine revelation. When we turn to issues pertaining exclusively to the other categories of indicators of the divine law, especially the Ijmā^c and analogy (*qiyās*), we enter an arena of much more pervasive inter-Muslim controversy, an arena in which the most fundamental matters are debated and virtually nothing is certain.

This chapter will explore Āmidī's account of the controversies that pertain to the Ijmā^c. The Arabic term *ijmā^c* means, of course, "consensus." I shall in this book use the expression "the Ijmā^c" as a generic term covering all particular instances of consensus, reserving the English term "consensus" for the particular instances. The Muslim authors themselves frequently use the expression *al-ijmā^c* in this way, although Arabic usage allowed them to use this expression of particular instances as well. (The difference has to do with varied usages of the definite article *al-*, a subject elaborated upon in the writings of the Arabic grammarians.) By speaking of "the Ijmā^c" I hope to underscore the distinctiveness of the consensus under consideration: it is a very special type of consensus that Muslim thought takes great pains to define and delineate. To begin with, it is a consensus *of Muslims*, or, as the majority of Muslim jurisprudents would have it, of Muslim mujtahids. But it bears certain distinctive features beyond even this feature, as we shall soon discover. The Arabic term can, of course, be used in a non-specialized way to mean simply "consensus" in the ordinary everyday sense. In the literature of Islamic theoretical jurisprudence, however, it does not have this ordinary

sense; rather, it acquires the character of a technical term. So widespread was its usage as a technical term, in fact, that Muslim jurists could not fail to keep its specialized sense always in mind. In order to keep this sense before my reader, I shall occasionally, when speaking of particular instances of the *Ijmāʿ*, use the phrase “*Ijmāʿic* consensus.” In so doing, I shall hope that I shall not be charged with redundancy. The modifier “*Ijmāʿic*” is intended to emphasize the specificity of the consensus with which the Muslim jurists are concerned.

It is important to understand that when Muslim jurists in Ḍamīdī’s day spoke of the *Ijmāʿ* they had *texts* in mind. The *Ijmāʿ* was for them primarily something that belonged to the past, something embodied in sayings or acts of Muslims of earlier generations. This is not to say that the *Ijmāʿ* could not extend into the present and future, that it was in principle a closed book (although some jurists sought to make it that). The most widely accepted theory allowed for the possibility of an augmentation of the *Ijmāʿ* through fresh consensus-making, but at the same time the theory, as we shall later see, made the consensus-making process so fraught with problems as to render fresh consensus-making virtually impracticable. For all intents and purposes, the *Ijmāʿ* was a historical phenomenon, a legacy from past generations to be discovered in texts. Hence Ḍamīdī’s inclusion of the *Ijmāʿ*, along with the Qurʾān and the Sunna, under the heading of *matn*, “text.”

Since an *Ijmāʿic* consensus, once formed, could never be set aside, the *Ijmāʿ* was in principle a cumulative, not a changing, phenomenon. Earlier generations were therefore necessarily in a privileged position, since their consensus-making narrowed the field for future consensus-making. Each generation of Muslims that engaged in consensus-making in fact narrowed the field for future generations. In theory, the sphere in which consensus-making was possible would be reduced to insignificant proportions, if not eliminated altogether. Some Western scholars have supposed from this that Islamic law became eventually enclosed within a straightjacket, unable to change or adapt to new conditions. As we shall later see, the matter is not quite so simple. The actual functioning of the *Ijmāʿ* as an indicator of the law often proved to be in practice highly inconclusive. Whether or not a particular *Ijmāʿic* consensus on a particular question of law actually existed could be a matter of intense debate among the mujtahids.

The texts in which the *Ijmāʿ* was believed to be embodied consisted most typically of sayings of prominent Muslims with which other Muslims concurred, although in theory they might also consist of narrations of *Ijmāʿic*-disclosing acts or endorsements. I shall refer to these texts as *Ijmāʿic* texts. Since the first generations of Muslims—that of the Companions of the

Prophet—enjoy pride of place in the consensus-making process, it is their sayings that are most often referred to. In fact, concrete instances of appeal to the Ijmā^c in the pages of the *Ihkām*—and there are many—almost always consist of citations of sayings of Companions of the Prophet. Āmidī places these sayings under the heading of *āthār*, a term that is synonymous with *hadīth* but that in Āmidī's day had apparently already become, at least for some jurists, a special designation for reports of sayings and acts of the Companions. I shall refer to this type of textual material as Āthāric material. We thus have, within the total body of texts containing indicators of the law, three main types: Qur'ānic, Sunnaic, and Ijmā'ic; and within the third type an important subtype, the Āthāric texts.

Unlike the Qur'ānic and Sunnaic texts, the Ijmā'ic texts were never assembled into discrete collections. The Qur'ānic corpus is, of course, *sui generis*, and the circumstances of its emergence are connected, in Muslim tradition, with the course of events immediately following the death of the Prophet. We should not, on the basis of the Qur'ānic precedent, expect any like compilation of Ijmā'ic material. But the Sunnaic texts are cut from the same cloth as the Ijmā'ic texts: both are *hadīth*. Why did not the collection of the latter go hand in hand with the collection of the former?

There are, of course, historical reasons why they did not, reasons connected with the Islamic *Gemeindebildung*. Although the notion of an authoritative consensus can be traced to early Islamic times, as we shall soon see, it was relegated to the sidelines with the burgeoning of interest in the Prophet's Sunna and the growing preoccupation with the gathering and compiling of Sunnaic *hadīth*. Only later did the Ijmā^c find a well-defined place within the Muslim scheme of things. By that time, the process of formation of the basic textual corpora of Islam had reached completion; while the Sunna had, by virtue of the priority it enjoyed in Muslim thinking, found expression in distinct collections of *hadīth*, the Ijmā^c was never to find a similar expression. The Ijmā'ic texts are thus scattered throughout a variety of genres of Islamic religious works: *tafsīr* works (commentaries on the Qur'ān), collections of Sunnaic *hadīth* (which, though focused on the Prophet, contain references to his Companions, which, in the case of the *Mutawatta'* of Mālik ibn Anas, are especially abundant), *sīra* ("biography" of the Prophet), *tabaqāt* works (collections of data on famous men), *fiqh* works, and *ta'rikh* works (historical chronicles), to mention the most prominent. The greatest of the early *tabaqāt* works, the *Kitāb al-tabaqāt al-kabīr* of Muhammad ibn Sa'd, devotes considerable space to information about the Companions of the Prophet and the generations that followed them. It is primarily concerned with information that attests to the personal merits of its subjects and their consequent

trustworthiness as transmitters of Sunnaic *ḥadīth*. Despite its focus upon individuals others than the Prophet, it is far from being a collection of *Ijmāʿ*ic texts—it is not interested in sayings or acts of individuals as possible expressions of the *Ijmāʿ*. In fact, sayings are sparse in this literature.

As we look over the controversies that pertain to the *Ijmāʿ*, we soon become aware of a somewhat startling fact. On virtually no issue pertaining to the *Ijmāʿ* does a consensus emerge. In other words, the Muslims seem not to have been able to achieve a consensus on the consensus itself. We will grapple with this anomaly later in this chapter.

The first matter that ʿĀmidī turns to is, as always, definition.¹ Although definitions of the term *ijmāʿ* must have abounded, ʿĀmidī regards only two as calling for comment, that of the Muʿtazilī Nazzām and that of Ghazālī. For Nazzām, the term applies to any statement of the law for which a conclusive argument (*ḥujja*) has been made, even that of a single person. Quite obviously, a statement for which a conclusive argument has been made would, in Nazzām's view, be accepted by all, since all may be presumed to be persuaded by the force of the argument. ʿĀmidī suggests that Nazzām is trying to eat his cake and have it (though not with that metaphor): he wishes to deny that the consensus of mujtahids carries authority in and of itself, quite apart from supporting arguments, while at the same time agreeing with the common view that a consensus of mujtahids must never be opposed. By juggling the term *ijmāʿ* to suit his own needs, he violates common usage, not to mention the technical usage of theoretical jurisprudence. Mere acceptance by all of a rule because of a conclusive argument that none can deny after having heard it does not constitute agreement of the sort usually designated as *ijmāʿ*. That agreement, as we shall see, consists of a *concurrence of opinions* arrived at separately through various and sundry arguments, none of which are productive of full certainty in and of themselves.

Ghazālī's definition raises much more ponderous issues. *Ijmāʿ*, for him, refers to the agreement of Muhammad's community in particular (as opposed to any other community) upon a religious matter. There are, says ʿĀmidī, three problems with this definition. First, it implies—even though Ghazālī would not have accepted the implication—a trans-generational conception of Muhammad's community: it is the community of all Muslims who have ever lived or will live. This being the case, an *Ijmāʿ*ic consensus could be reached only on the Day of Resurrection. Second, the definition makes no mention of mujtahids. Therefore, assuming that the Muslims in a particular generation constitute the Muslim community (which Ghazālī actually maintains though his definition implies the opposite), then we must conclude that if there are no mujtahids in a particular generation an *Ijmāʿ*ic consensus

may be established entirely by nonmujtahids. But this is not so. Third, the phrase “upon a religious matter” is too limiting: it implies that an agreement on something other than a datum that is believed to derive in some way from revelation and from no other source—for example, a rational principle or social convention—cannot constitute an Ijmā’ic consensus. This is in conflict with the notion, later affirmed by Āmidī, that the term *ijmā’* embraces any agreement whatsoever that arises among mujtahids.

Āmidī now offers his own definition, in which he remedies the deficiencies of Ghazālī’s definition. The term *ijmā’*, he says, refers to *the agreement of the entire body of mujtahids of Muhammad’s community in a particular generation upon a rule of law² pertaining to a particular case.*³ Āmidī does not actually use the term *mujtahids* in his definition but prefers rather the designation *ahl al-hall wa’l-‘aql*, “those who loose and bind”. The two designations are synonymous since it is precisely the mujtahids who loose and bind. Since mujtahids are something more than scholars in the broad sense, I shall throughout this book refer to them by this Arabic term. One could call them the “interpreters” of the divine law in the sense that they explain the law to their fellow Muslims, basing their own understanding (*fiqh*) of the law upon a careful pondering over its indicators; however, “interpreters”—or, for that matter, any other English term that suggests itself—does not carry the specific connotations of the term *mujtahid*, which are themselves an important part of the subject matter of this study, and I shall therefore keep to the Arabic term. We shall learn later what sorts of deliberations a mujtahid conducts and who is qualified to be a mujtahid.⁴

Āmidī’s definition embraces both inclusive and exclusive components. “Agreement” is inclusive: it includes agreement expressed through verbal pronouncements, acts, or silent consent to or overt endorsement of pronouncements or acts. The exclusive components are “the entire body of,” which excludes agreement of some as opposed to all of the mujtahids of Muhammad’s community; “mujtahids,” which excludes the agreement of nonmujtahids, called “commoners” (*‘awāmm*); “of Muhammad’s community,” which excludes the agreement of mujtahids of other scriptural communities; and “in a particular generation,” which excludes the cumulative agreement of Muslims throughout history as consummated on the Day of Resurrection. The phrase “upon a rule of law pertaining to a particular case,” the last component of the definition, is inclusive: it includes both affirmative and negative rules (“*x* is obligatory,” “*x* is not obligatory”).

Āmidī notes that the Arabic term *hukm* (here translated as “rule of law”) is inclusive of *al-ahkām al-‘aqliya*, “rational categorizations.” He seems to wish to call his reader’s attention to the fact that, while only Sharī’a categorizations

(*al-ahkām al-sharʿiyya*), including rules of law, are of interest in the science of theoretical jurisprudence, the Ijmāʿ is not limited to the sphere of Shariʿa categorizations: any *hukm* whatsoever upon which the community’s mujtahids agree bears the stamp of the Ijmāʿ. Āmidī does not give any example of the rational *hukm*, and we are therefore left in the dark as to just what he means by a rational “*hukm* pertaining to a particular case.” For our purposes it is not necessary to understand exactly what he has in mind, since our attention will be confined to the Ijmāʿ considered as an indicator of Shariʿa law.

Although the Ijmāʿ can in principle, according to Āmidī’s definition, find expression in sayings (*aqwāl*, also the term used for sayings of the Prophet), acts, silence, and overt (i.e., verbalized) endorsements, Āmidī has little to say, in his long discussion of issues pertaining to the Ijmāʿ, concerning acts and overt endorsements. There is nothing in this discussion on the order of the scrutiny he devotes to the subject of the acts of the Prophet. As for silence, Āmidī seems to treat it—to the extent it is expressive of the Ijmāʿ— as a kind of tacit (as opposed to overt) endorsement of a saying. The Ijmāʿ is therefore most typically represented in some sort of verbal pronouncement, whether one concurrently voiced by all mujtahids or one voiced by some and endorsed by the silence of the others. To the extent it is so represented, it is easily subsumable under the heading of texts (*matn*). In any case, the acts of past generations of Muslims that give expression to the Ijmāʿ can only be known through verbal reports, which also constitute a kind of text.

Having presented and justified the above-mentioned definition of the Ijmāʿ, Āmidī hastens to add that those who wish to include nonmujtahids in the making of an Ijmāʿic consensus—among whom, as we shall see, he himself is to be counted—may replace the term *mujtahid* (or, rather, “person who looses and binds”) with the term *mukallaf* (“responsible person,” “person who is subject to the divine law”). The definition that speaks of an agreement of the mujtahids of Muhammad’s community seems designed to suit the majority of Āmidī’s fellow Ashʿarīs; the definition that speaks of an agreement of the responsible persons of Muhammad’s community is clearly included to satisfy Āmidī’s own personal proclivities, which will become evident as we proceed.

The issues pertaining to the Ijmāʿ that Āmidī turns to, after having completed the task of definition, reflect a long history of controversy over matters of fundamental importance for the Muslim intellectual tradition, a history that extends back to the earliest stages in the development of Muslim jurisprudential thought. It will therefore be useful for us to review that history briefly before plunging into the deep waters of Muslim disputation over the issues themselves. It will be recalled from the introduction that the first Muslim

scholars to engage in sustained and systematic discussion of questions of theoretical jurisprudence—the legists of Schacht's "ancient schools"⁵—considered their own consensus to be the next highest authority after the Qur'an itself. The "ancient schools" arose in the three major centers of Muslim intellectual and cultural life within the newly created Islamic empire: Iraq, Syria, and Western Arabia, especially Medina. Each school developed its own distinctive consensus and body of doctrine, notwithstanding the considerable amount of doctrine shared by all schools that was soon to emerge. Originally the consensus in each region was believed to be the expression of a "living tradition" (Schacht's term), an evolving Sunna distinctive of the Muslim community and rooted in Qur'anic precepts. In time, however, as the piety of the Muslim community came to be more and more focused on the Prophet, this Sunna was thought to have originated with the Prophet himself. Accordingly, the consensus in each region came to be regarded as the authoritative representation of the "Sunna of the Prophet."

Meanwhile, just as the ancient schools were reaching their zenith, an intellectual movement of a radically different sort burgeoned in the same Muslim urban centers, the *hadith* movement (Schacht's "traditionalist movement"). This was made up of a class of scholars, distinct from the legists of the "ancient schools," whose primary task was the gathering of orally transmitted accounts (*ahādīth*) of the Prophet's sayings and actions. Their contention, vis-à-vis the legists, was that these accounts were the only truly reliable representation of the Prophet's Sunna; unlike the consensus of the "ancient schools," which were the product of scholarly discussion and speculation, these accounts transcended all human deliberation and gave the believer direct access to the Prophet himself, for they represented a straightforward reporting of what the earliest Muslims had heard the Prophet say and seen him do. This claim proved to be immensely convincing for a great many Muslims and before long became an undeniable truth for the majority. *Hadīth* had triumphed over scholarly consensus in the contest for the role of representative of the Prophet's Sunna. This triumph signaled the end of the era of the "ancient schools."

Shāfi'ī, as we learned in the introduction,⁶ developed a jurisprudential schema in which the body of narrative material that was in process of being assembled and codified by *hadīth* specialists usurped the position of primary authority, next to the Qur'an, formerly held by the consensus of scholars. The *hadīth* movement seems, at least in its earlier stages, to have promoted a general bias against consensus. This bias is evident to some extent in the work of Shāfi'ī: he clearly has no use whatsoever for a consensus of scholars and excludes it entirely from his schema. However, he does retain the consensus of

the Muslim community *as a whole*, which, according to Schacht, also entered to some extent into the thinking of the ancient schools. Shāfiʿī makes a case for this general Muslim consensus on grounds that seem designed to appeal to *hadīth* specialists: the general consensus is what guarantees the transmission of *hadīth*. Not all *hadīth* enjoys this guarantee: that which does represents *sunna mujtamaʿ ʿalayhā*, “Sunna on which there is a consensus”;⁷ but alongside this type of Sunna there is *sunna la yujtamaʿ ʿalayhā*, “Sunna on which there is no consensus.” For Shāfiʿī a consensus on the Sunna could only mean a consensus in the *reporting* (*hikāya*) of the Sunna, that is to say, a consensus that had as its proper object *hadīth*. He could not accept the notion of a consensus that affirmed the gist of the Sunna without actually reporting what the Prophet had said or done, thus in effect replacing a lost *hadīth*. For Sunna is by its very nature something experienced, something heard (*masmūʿ*); and what is heard can only be reported.

This notion of a consensus undergirding the orally transmitted Sunna may have found acceptance in *hadīth* circles even before Shāfiʿī’s time, although there is, in the *Ihkām*, a faint clue to the effect that some within *hadīth* circles denied the consensus even this role, thus depriving it of any consideration whatsoever. On the other hand, Shāfiʿī himself allows the general consensus of all Muslims a role over and above that of guaranteeing transmission, thus departing to some extent from the mindset of the *hadīth* movement, which was otherwise a major influence on his thinking. This role consisted of the authoritative establishment of rules of law that are not clearly set forth in the Qurʾān or Sunna. To say that a rule is not clearly set forth (*ghayr mansūs ʿalayhā*) in these sources is not to say that it has no basis in them whatsoever. Shāfiʿī accepted the fact that many of the rules had to be derived from the Qurʾān and the Sunna through interpretation and reasoning by analogy. When a rule is clearly set forth, interpretation and analogy are unnecessary. Where interpretation and analogy enter in, the outcome will, of course, be somewhat less than certain. Shāfiʿī *may* have regarded the consensus as intervening at this point and according certainty to what is, by virtue of interpretation and analogical reasoning as such, uncertain. However, Shāfiʿī does not elaborate on his view of how the consensus works in relation to rules not clearly stated in the Qurʾān or the Sunna, so we must allow for the possibility that he saw the consensus as establishing what has no basis whatsoever in the Qurʾān and the Sunna and thus as functioning independently of revelation. The important thing to remember at this point is that it is the consensus of *all* Muslims that Shāfiʿī has in mind, not the consensus of scholars. The latter is for him, as for the *hadīth* movement of his time, of no importance.

After Shāfiʿī's time, the consensus of scholars—that is to say, of mujtahids—found its way back into the thinking of the majority of Muslim jurists and became transformed into the *Ijmāʿ* of classical theoretical jurisprudence. It is this majoritarian outlook that the first of Āmidī's two definitions of *ijmāʿ* is intended to satisfy. To some extent, therefore, the spirit of the "ancient schools" was able to survive the setbacks inflicted on it by the *hadīth* movement and by Shāfiʿī. However, whereas deliberation that led to consensus among the "ancient schools" could be carried on with considerable freedom of discussion, now such deliberation was, thanks to Shāfiʿī, hemmed in by a potentially massive corpus of textual material. Where a text was well established and its signification of a rule of law clear, the consensus had no *raison d'être*. Only where the text was uncertain or its legal import open to interpretation or perhaps not relevant at all to a case under consideration did the consensus become operative. Thus the carefully circumscribed role that Shāfiʿī had assigned to the general consensus of the community fell finally upon the reemergent consensus of scholars, the *Ijmāʿ* of classical theoretical jurisprudence.

But the majority view was, as we have noted, just that: the *majority* view—and like all majority views it always had to justify itself against the challenges of dissenting opinion. Any dissenting opinion that had arisen among Muslim jurists within an *original* atmosphere of disagreement (as opposed to an original atmosphere of consensus) became a legacy for all future generations, for reasons we shall consider later. Dissenting opinion in the face of majority opinion (as opposed to dissenting opinion in the face of a *previously established* consensus) had always to be taken into account. One could not properly adhere to a majority opinion except on the basis of a process of careful reasoning—and, in the presence of others, disputation—in which the arguments for and against *both* the majority opinion and all dissenting opinions had been carefully weighed and tested. Dissenting opinions varied, as we shall see, from rejection of the principle of *Ijmāʿ*ic authority *in toto* to the more specific rejection of the majoritarian conception of the *Ijmāʿ* reflected in Āmidī's first definition noted above: the *Ijmāʿ* of mujtahids in any given generation. The latter rejection allowed for the acceptance of other understandings of the *Ijmāʿ*. The most commonly accepted alternative to the *Ijmāʿ* of mujtahids in any given generation seems to have been that upheld by Shāfiʿī himself, namely, the *Ijmāʿ* of the entire Muslim community in a given generation, including both mujtahids and nonmujtahids. But some groups, according to Āmidī's account, favored other alternatives. Some accepted only the *Ijmāʿ* of the first generation of Muslims, the Companions of the Prophet, thus opposing the majority view that allowed the *Ijmāʿ* to emerge in any

generation. Other versions of the *Ijmāʿ* that were advocated in opposition to the majority view included the *Ijmāʿ* of the Muslims of Medina (a territorially based consensus), that of the descendants of the Prophet (the *ʿAlids*), that of the first four caliphs, and that of the first two caliphs.

But disputation between the upholders of the majority view and the dissenting minorities by no means represents the whole of Muslim disputation on the subject of the *Ijmāʿ*, for even among the former there was much to debate. The majority was united upon a single conviction—that the *Ijmāʿ* of mujtahids in any given generation was an authoritative indicator of the divine law. Any issues that this central conviction left unresolved could only occasion further division, even within the ranks of the majority. In fact, certain of these issues would give rise to new majority-minority confrontations.

In dealing with the wide range of issues that pertain to the principle of *Ijmāʿ*ic authority, Āmidī follows a fairly discernible logical order. First come the issues—three altogether—that have to do with the viability of the very idea of *Ijmāʿ*ic authority. The fourth through the thirteenth issues are concerned with the personnel involved in the making of an *Ijmāʿ*ic consensus, their qualifications (the fourth through the seventh and the ninth through the twelfth issues) and their number (the eighth and thirteenth issues). Of these, it is the fifth issue that pits the *Ijmāʿ* of mujtahids against that of the community as a whole. The fourteenth, fifteenth, and sixteenth issues are concerned with the process whereby an *Ijmāʿ*ic consensus is constituted; the seventeenth and the eighteenth, with the scholarly deliberations leading up to such a consensus; and the nineteenth, twentieth, and twenty-first, with the limitations that an *Ijmāʿ*ic consensus of a particular age places upon future generations of mujtahids. The remaining issues (the twenty-second through the twenty-seventh) take up a number of miscellaneous topics.

The first three issues, as we have just noted, take up the general question: is the idea of an authoritative *Ijmāʿ* of Muslims in and of itself viable? Those who answer this question in the negative may be presumed to deny any validity whatsoever to the principle of *Ijmāʿ*ic authority. That there were Muslim thinkers, at least in the earlier centuries of the Islamic era, who took this position is evidence of an anti-*Ijmāʿ* bias within certain circles. These opponents of the *Ijmāʿ* had at their disposal three different types of arguments. The first sought to rule out the very possibility of an *Ijmāʿ*ic consensus (that is to say, a consensus of *all* mujtahids in a particular age), the second attacked the knowability of such a consensus, and the third contended that there was no demonstrable basis for the principle of *Ijmāʿ*ic authority. These arguments follow a definite logical progression. If an *Ijmāʿ*ic consensus is intrinsically impossible, there is no need to go further. The impossible cannot be knowable; nor can

it have any authority. If the possibility of an Ijmā'ic consensus is conceded, one may move on to attack its knowability; and if that is conceded, one may finally seek to argue that such a consensus, once known, carries no authority.

In attacking the possibility of the Ijmā',⁸ the opponents of the principle of Ijmā'ic authority have in mind a type of possibility that, as I suggested earlier, may best be called empirical possibility.⁹ This type of possibility embraces events the occurrence of which does not entail any breach of the regularities observable in the phenomenal world, the world experienced through the senses. The opponents of the Ijmā' are thus not affirming that the idea of the Ijmā' is logically absurd, since it does not contradict any axiom of human reason. They are saying, rather, that the actualization of the Ijmā' would entail a breach of the structural regularities of the phenomenal world and is therefore impossible within the framework of those regularities (or, rather, of the divine "custom" that occasions them). Furthermore, in taking this position, the opponents have in mind only an Ijmā' that does not amount to concurrence on a necessary truth, a judgment unequivocally dictated by reason. Such concurrence is certainly possible within the framework of phenomenal regularities but is of little interest for theoretical jurisprudence.

What is of interest is concurrence on rules of law, which are not dictated by reason, and it is this concurrence that the opposition holds to be empirically impossible. The argument for this position runs as follows. Any consensus upon a rule of law must—in order to be a truly Ijmā'ic consensus—arise out of consideration, on the part of each participant in the consensus-making process, of an indicator of that rule, for the Ijmā' is always the product of the deliberation of individuals *working independently of each other*, and this deliberation ordinarily entails a consideration of indicators. The indicator in question will be either clear and decisive or indefinite and subject to interpretation.

If it is clear and decisive, then it is empirically impossible that the indicator would not itself have been transmitted to successive generations, considering that any clear-cut indicator of a rule of divine law is vital to the interests of the community, both in this life and in the hereafter. For our experience of the phenomenal world tells us that when a community perceives something to be vital to its most fundamental interests it will never let that thing be lost in forgetfulness. Now if the indicator in question was indeed transmitted from generation to generation, it alone would constitute for all later generations a sufficient basis for the rule under consideration: there would be no need for the Ijmā' to intervene as an indicator of the rule.

If, on the other hand, the indicator in question is subject to interpretation and productive only of opinion, then it is empirically impossible, given the

different proclivities that are bound to exist in a large group of people and to influence their interpretation of the indicator, that a unanimous agreement such as is required in order for the *Ijmāʿ* to be actualized should arise among them on a particular rule of law, just as it is empirically impossible, given the different food preferences that exist among a large number of people, that a unanimous agreement should arise among them as to what to eat on a particular day. Where there is no indicator at all, the impossibility of a unanimous agreement upon a rule of law is even more patent.

It is important to understand that this argument rests upon the assumption that an *Ijmāʿ*ic consensus may not be said to exist unless the consensus is completely unanimous and arrived at as a result of independent thinking on the part of all those involved in the consensus-making process. The second condition rules out the consensus that results from influence of some upon others: such a consensus is not a true *Ijmāʿ*ic consensus. Āmidī has already affirmed this condition in his criticism of Nazzām's definition of the *Ijmāʿ*. We may no doubt suppose that the proponents of the argument under consideration would have been less adamant about the impossibility of a unanimous consensus within a large group of people who were susceptible to persuasion by the more forceful persons in their midst. But such people would not be mujtahids. Mujtahids are by definition scholars who arrive at conclusions independently of each other.

In response to this line of argumentation, the upholders of *Ijmāʿ*ic authority have what Āmidī considers to be an adequate reply. If the indicator of a rule of law is absolutely clear and decisive, we may suppose it to be vital to the interests of the community only on the assumption that a unanimous consensus of mujtahids on this rule may not itself function in its place as the decisive indicator. If we do away with this assumption, then we are free to regard the consensus itself as serving the interests of the community, and there is no reason to insist that the original indicator must be transmitted to successive generations. A new indicator—the *Ijmāʿ*ic consensus—has replaced the original one. Thus the obstacle to the empirical possibility of the consensus is removed. If, on the other hand, the indicator is unclear and open to diverse interpretations, a unanimous consensus of a vast number of mujtahids on a rule of law remains empirically possible. That this is so is proven by the fact that heretics sometimes are able to reach a unanimous consensus on false grounds, even when there are indicators to the contrary; for if it is empirically possible for people to reach a unanimous consensus in the face of contrary indicators, it is certainly empirically possible for mujtahids to reach a consensus on the basis of supportive though interpretable indicators. Furthermore, we have clear instances of unanimous consensus among Muslims upon rules

of law: all Muslims agree that they are required by the law to perform the five daily ritual prayers, the fast of Ramadān, the payment of the alms-tax, and the *hajj* pilgrimage. Since the actual occurrence of a thing proves its possibility, we may conclude that the Ijmā'ic consensus is a possibility.

The second approach to the invalidation of the principle of Ijmā'ic authority assails the knowability of the Ijmā'.¹⁰ An Ijmā'ic consensus that has actually occurred is of no use if its occurrence cannot be known. Here again it is the empirical possibility of a thing that is at issue. The opposition denies that the knowledge that a consensus (whether Ijmā'ic or not) has occurred is empirically possible. It is interesting that this denial is attributed, according to one tradition, to Ahmad ibn Hanbal. While the tradition may be doubted, we may suppose with some degree of confidence that it originated within *hadīth* circles. Here is perhaps evidence of an anti-Ijmā' bias within the *hadīth* movement at a fairly late stage in its development, a stage that possibly occurred just before the professed followers of Ibn Hanbal had come to form a distinct school of *fiqh*, the Hanbalī school as we know it.

Āmidī's case for the knowability of an Ijmā'ic consensus appeals to actual instances of unanimous (though not Ijmā'ic) consensus, thus utilizing once again the principle that the occurrence of a thing proves its possibility. We all know, claims Āmidī, that there is a consensus among Shāfi'īs to the effect that the killing of a Muslim by a member of a protected religious community is forbidden and that a marriage concluded without the participation of a male guardian of the bride is invalid, and we also all know that there is a consensus upon the contrary of these views among the Hanafis. These instances of supposedly unanimous consensus are not, of course, instances of the Ijmā' as Āmidī has defined it, for they are not instances of consensus among the entire body of mujtahids. Their probative value lies in the fact that they are instances of *unanimous* consensus within a large group. If such instances are knowable, there should be no reason why an Ijmā'ic consensus cannot be knowable.

But, argues the opposition, we do not *really* know that a consensus of the sort just described existed among the Shāfi'īs and Hanafis. What we know is, rather, that Shāfi'ī and Abū Hanīfa themselves held these views and that their followers have since accepted these views on the authority of their masters. This deferential acceptance (*taqlīd*) of the view of a great master by a large number of people does not constitute a true consensus.

Āmidī, in his reply to this objection, simply shifts to another instance of what he believes to be incontrovertible knowledge of a unanimous consensus within a large group, although, again, the consensus is not Ijmā'ic. We all know that there is a unanimous consensus among Jews and Christians to the effect that Muhammad is not a prophet of God. This consensus is genuine

since we do not know of any authoritative figure in Jewish and Christian history, such as Moses or Jesus, to whom the Jewish and Christian denial of the prophethood of Muhammad may be attributed such that Jews and Christians may be regarded as having adopted an attitude of deferential acceptance.

Āmidī's discussion may not solve all the problems that pertain to the knowledge of the *Ijmāʿ*. It is especially striking that he does not cite, as proof of the knowability of consensus, any instance of a true *Ijmāʿ*ic consensus, as he has done to prove its possibility. However, Āmidī's discussion appears to have served the needs of the Muslim dialectician in endeavoring to silence, within a disputational format, a Muslim opposition that was never in any case strong enough to represent a serious menace to what had become by Āmidī's time an orthodox doctrine. In actual fact, the issue of the knowability of the *Ijmāʿ*, if placed before a larger and more active forum, had the potential of becoming a much more serious challenge to the principle of *Ijmāʿ*ic authority than appears to be the case from Āmidī's account, for the Muslims never developed a formal mechanism for constituting an *Ijmāʿ*ic consensus. To know that such a consensus existed in any age was tantamount to knowing what was in the mind of every person qualified to participate in the consensus who was alive at the time of its conclusion. That this is not easily accomplished, given the procedural ambiguities of the process of *Ijmāʿ*-formation, is obvious. However, we shall have occasion to return to this issue later.¹¹

It is also worth noting that the discussion of the issue of the knowability of the *Ijmāʿ* does not take up the question of whether, in the absence of knowledge, one may have grounds for believing the occurrence of an *Ijmāʿ*ic consensus to be probable. Knowledge was, in Muslim thought, correlated with certainty and contrasted with opinion, and opinion was viewed as the conviction of a thing's probability, that is to say, of a thing's occurrence being more likely than its nonoccurrence. The brevity of Āmidī's discussion may, therefore, be due to the fact that many thinkers, including Āmidī, were satisfied to regard the *Ijmāʿ* as an opinion-engendering (or probability-engendering) indicator of the law (*dalīl zannī*) and thus did not require that the occurrence of an *Ijmāʿ*ic consensus be known with complete certainty.

Once the possibility and knowability of an *Ijmāʿ*ic consensus were conceded, there remained for the opponent of the principle of *Ijmāʿ*ic authority, as we have noted, one last stratagem: a direct attack on the principle itself. Āmidī's discussion of the issue of the authority (*hujjiya*) of the *Ijmāʿ* is the longest of all the *Ijmāʿ*-related discussions and one of the longest in the entire *Ihkām*.¹² Arguments against the possibility and knowability of the *Ijmāʿ* were apparently not perceived to be a serious threat to the widely accepted and, eventually, typically Sunnī doctrine of *Ijmāʿ*ic authority. Arguments that

focused directly upon the subject of authority as such were, however, another matter, partly because the Sunnī advocates of the principle of Ijmā'ic authority were keenly aware of the vulnerability of the principle to direct attack, owing to the acute problems that were entailed in its defense. Goldziher relates an anecdote in which the great Shāfi'ī was asked by a student to give proof for the authority of the Ijmā', whereupon Shāfi'ī went into three days of solitary retirement. After the three days were over, he returned, looking haggard and worn but claiming to have found the sought for proof in Qur'an 4:115.¹³ This internal concern on the part of the advocates of Ijmā'ic authority to surmount the sheer difficulties of the task of defending their point of view was no doubt one of the factors accounting for the extensiveness and thoroughness of the disputation recorded by Āmidī.

Another factor was, of course, the existence of adversaries within the Muslim community. Āmidī mentions as among the deniers of Ijmā'ic authority the Shī'īs, the Khārijīs, and, among the Mu'tazilis, Nazzām (whose definition of the Ijmā', as we noted, sought to transform it into something other than what mainline thought understood it to be). As we shall later see,¹⁴ the Shī'īs do not reject the idea of Ijmā'ic authority altogether. For them, an Ijmā'ic consensus carries authority only if the Imām is present within the community and thus among those involved in the consensus-making process. However, since the word of the Imām carries authority in and of itself quite apart from the Ijmā', the Ijmā' as such does not have any authority which is truly intrinsic to itself; whatever authority it carries is inseparable from the authority of the Imām. For that reason, Āmidī is able to include the Shī'īs among the deniers of the authority of the Ijmā'. It should be noted that Āmidī makes no reference here to Ibn Hanbal, though, as we have noted, he includes him among the reputed deniers of the knowability of consensus. This absence of any name connected with the *hadīth* movement suggests that to the extent that members of this movement rejected the principle of Ijmā'ic authority altogether—and it is entirely conjectural that any in fact did, and if any did their number must in any case have been small—they must have felt that arguments against the possibility or knowability of the Ijmā' were sufficiently compelling to obviate involvement in the debate over authority. Such *hadīth* as were cited in support of the authority of the Ijmā' were, as we shall soon see, open to diverse interpretation and do not in themselves constitute evidence of a pro-Ijmā' bias within *hadīth* circles. On the other hand, as I have already suggested, most scholars within the *hadīth* movement probably accepted the principle of Ijmā'ic authority along the lines of Shāfi'ī's formulation of that principle, which rejected only the exclusive authority of the Ijmā' of mujtahids. In the debate over the authority of the Ijmā', it is not yet the

Ijmāʿ of mujtahids which is at issue but the Ijmāʿ considered as a general principle quite apart from the issue of whether or not nonmujtahids, or commoners, are to be included among the Ijmāʿ-makers. This latter issue emerges later in Āmidī's discussion.

Those who uphold the authority of the Ijmāʿ, Āmidī tells us, employ two sorts of arguments: textual arguments—that is to say, arguments which appeal to the Qurʾān and the Sunna—and rational arguments. In the *Muntahā* Āmidī makes a somewhat strange statement about these arguments.¹⁵ Those who consider the authority of the Ijmāʿ to be merely probable, he says, find the textual arguments to be adequate, whereas those who insist that the authority of the Ijmāʿ is certain and beyond doubt do not. It is the latter, he suggests, that seek to develop rational arguments. He then tells us that he will first present the more weighty of the textual arguments, after which he will then turn to the method of argument which yields real certainty, namely the rational method (*al-maslak al-ʿaqlī al-yaqīnī*). What is strange about this statement is that it seems to reflect a preference on Āmidī's part for the rational argument for the authority of the Ijmāʿ. As we proceed through his discussion of the textual and rational arguments in both the *Muntahā* and the *Ihkām*, we discover that his preference is really for the textual arguments and that he regards the rational method of argument as leaving much to be desired.

Āmidī's distinction between jurists who regard the authority of the Ijmāʿ as probable and those who regard it as certain calls for special comment. It soon becomes clear from Āmidī's discussion of Ijmāʿ-*related* issues that he included himself among the former group of jurists. These considered the rational arguments for the authority of the Ijmāʿ to be completely ineffective and the textual arguments as establishing that authority with less than full certainty. However, it was not necessary, in their view, to reach full certainty about the authority of the Ijmāʿ so long as one had grounds for regarding that authority as probable. The textual arguments, it was believed, provided just such grounds. To put the matter in slightly different terms: one did not need to *know* that the Ijmāʿ was an authoritative indicator of the divine law so long as one could at least *be of the opinion* that it was such an indicator.

As we noted in an earlier discussion of the epistemological postulates of the science of theoretical jurisprudence, the Muslim intellectual tradition drew a sharp distinction between knowledge and opinion.¹⁶ Here we are presented with a case where knowledge is unavailable but opinion suffices in its place. Opinion was, for the medieval Muslims, the sense of a thing's being probable (*murajjih*, literally, "preponderant"), knowledge the sense of a thing's being certain, beyond doubt. If the Ijmāʿ was but a probable indicator

of the divine law, then any rule of law upon which an Ijmā'ic consensus was reached could only be a probable rule. But probable rules could be fully operative as positive law, as law to be applied to concrete cases by courts. Such rules were probable only in the sense of being probable representations of a transcendent divine law, which existed in the mind (*naḥs*) of God and of which texts and nontextual indicators were a concrete revelation, or manifestation. As rules applied by courts, these rules were as definitely and as certainly positive law as any law could be. Most Sunnī jurists accepted the maxim that, in the absence of solid knowledge of the divine law, considered opinion as to what constituted that law was binding upon judge and parties. We will be encountering this maxim throughout this study.

Just as Muslim jurists drew a distinction between a sure indicator and a probable indicator (*dalīl qat'ī* and *dalīl zannī*), so they also drew a corresponding distinction between issues that admitted only of a sure resolution and issues that admitted of a probable, or opinion-based, resolution—that is to say, between issues that could only be resolved through the instrumentality of sure indicators and issues that could be resolved through the instrumentality of probable indicators (*masā'il qat'iya* and *masā'il zanniya*). Issues pertaining to conduct (*'amal*) were generally placed within the latter category, while issues pertaining to theory or to theological doctrine might be placed in either of the two categories, depending on how fundamental the matter under discussion happened to be. Issues touching on matters of great importance, such as the existence of God and the prophethood of Muhammad, could never be resolved through mere opinion. It was in fact a heresy to suggest that God's existence or Muhammad's prophethood was merely probable, for this meant that one who doubted these verities could never be censured. Just where the line was to be drawn between issues admitting only of sure resolution and issues admitting of probable, or opinion-based, resolution was itself a matter on which the jurists differed.

As Āmidī indicates, the jurists were in disagreement as to which of the two categories the issue of the authority of the Ijmā' belonged to. There is no doubt that at least some rules of fundamental importance to Muslims, such as the prescriptions of the five daily prayers, the Ramadān fast, the alms-tax, and the *hajj* pilgrimage (referred to earlier), were commonly regarded as resting upon Ijmā'ic authority. Here were rules relating to the most central acts of worship, which, in the thinking of many, could not have as their basis merely probable indicators. It was no doubt for this reason that some Muslim jurists insisted that the authority of the Ijmā' must be established with full certainty, that it could never be contingent upon fallible opinion. Āmidī and his kind, on the other hand, seem to be informed primarily by the

realities of dialectic: the textual indicators of the authority of the *Ijmā'* simply were not decisive enough to allow one to claim absolute confidence; they were in fact all *dalīl zannī*. All the more reason, therefore, for their resorting to the principle that opinion is sufficient as a means of resolving issues pertaining to the rules of law.

Although Āmidī deals with the textual arguments for the authority of the *Ijmā'* before turning to the rational argument, I shall reverse his order of treatment and first dispose of the rational argument. When we have seen why the rational argument does not work, we shall be in a better position to understand why the textual arguments, problematic as they were, played such a crucial role in the thinking of jurists such as Āmidī. The rational argument runs as follows.¹⁷ When a large number of people (let us suppose mujtahids), having pondered a novel case (*hāditha*) carefully, agree decisively and confidently upon a particular rule of law as the solution to the case, it is empirically impossible that they should arrive at this decisive and confident agreement without there being an incontrovertible basis or justification for the rule; in other words, it is empirically impossible that such a decisive and confident agreement could be mistaken. Empirical impossibility, let us remember, is impossibility within the framework of the structural regularities of the phenomenal world as determined by the divine "custom"; it stands in contrast to logical impossibility. The reason why the consensus just described cannot, according to the rational argument, possibly be mistaken is that according to our experience of the phenomenal world it is impossible, should the rule in question not have an incontrovertible justification, that no one at all among the large number of people involved in the deliberations would have noticed this.

This reasoning seems to rest upon a point noted earlier, namely, that communities regularly do whatever is vital to their ultimate interests, whether worldly or otherworldly. It is empirically possible that a small number of people might be united around a common motive for agreeing upon a rule of law for which there was not an incontrovertible justification, but it is empirically impossible that a large number of people should be united around such a motive because all such motives stem from individual proclivities, which can never be uniform in a large group. The argument presupposes that a human group will never reach a unanimous (i.e., *Ijmā'ic*) consensus on a rule of law willy-nilly but will always have some sort of incontrovertible reason for agreeing on the rule.

In the case of the Muslim community, this reason would consist—at least in the view of those jurists who rejected the possibility of a rational basis for the divine law—of clear indicators contained within divine

revelation. We may recall here that those adversaries of the principle of Ijmā'ic authority who had denied the very possibility of the Ijmā'c argued that where there is a clear, noninterpretable indicator in divine revelation for a rule of law people will certainly agree on the rule, but the agreement will be of no consequence since they will necessarily, in consideration of the vital interests of the community, preserve the original indicator. In the present context we seem to be confronted with a point of view that maintains that the Ijmā'ic consensus itself may function as an authoritative indicator in place of the original indicator, which may be forgotten without detriment to the interests of the community, but insists that the very existence of the consensus is evidence that an original indicator was taken into account and that it was clear and not open to diverse interpretations.

Even if we assume that this argument is valid, we soon discover, on further reflection, that what it establishes raises two fundamental problems. The first stems from the fact that an authoritative Ijmā'ic consensus can only be constituted, if the argument be correct, by a "large number of people" (*al-khalq al-kathīr*). According to standard usage among Muslim jurists, "large number" meant a number sufficient to rule out the possibility of collusion upon something false or spurious, in this case a spurious rule of law, one not having an incontrovertible justification. Such collusion required common motives that would be empirically impossible among a large number, as noted earlier. Āmidī's problem with this way of thinking is that it flies in the face of the textual indicators (to be considered presently) that indicate that the unanimous consensus of Muslims is authoritative *no matter what their number*. But there is a more serious problem with the argument: the authoritative consensus it claims to establish is not necessarily a Muslim consensus but may arise within any group large enough to bring into play the empirically based considerations relating to motives for collusion. Such considerations become important to Āmidī and like-minded jurists in connection with the transmission of verbal data, and we shall be returning to them later;¹⁸ but here what is at issue is not the transmission of verbal data but the validity of rules of law. In contending that any "large number" of people can, by virtue of empirically based considerations, bring about an authoritative consensus on a rule of divine law, the rational argument again flies in the face of the textual indicators, which, as we shall see, suggest that the making of an authoritative consensus upon such a rule is a distinctive prerogative of the Muslim community.

There is a further problem with the rational argument that Āmidī does not mention but that anyone familiar with his thinking can easily detect. It insists that an authoritative consensus upon a rule of law may arise only when the

rule has an incontrovertible justification. In the case of the Muslim community such justification would, in the view of most Muslim jurists, have to consist of a clear and absolutely conclusive textual indicator. But many Muslim jurists considered the authority of the *Ijmāʿ* as having special relevance in situations where there were no indicators that could yield a desired rule in an absolutely conclusive manner, where instead there were only ambiguous and highly interpretable indicators or perhaps no indicators at all. The proponents of the rational argument seem not to allow the emergence of an authoritative consensus at all in such situations.

These problems arise, as I have indicated, on the assumption that the rational argument for the authority of the *Ijmāʿ* is valid. But it turns out in Āmidī's discussion that the argument is not valid. It can be refuted by means of a single example, drawn from our experience of the phenomenal world, which shows that it is not empirically impossible for a large group to agree on something that lacks an incontrovertible justification. This example is the agreement among Jews and Christians, who certainly constitute a "large number," that the Prophet Muhammad was not speaking the truth when he claimed to be a prophet and that his mission is therefore invalid.

Āmidī brings his argument to a head by means of a disjunction. Either it is empirically impossible for the Jews and Christians to agree on an erroneous judgment, one having no justification, or this is empirically possible. If it is empirically impossible, then we must conclude that Muhammad was indeed an imposter and his mission invalid. Since this conclusion is unacceptable, we are driven to the view that agreement of a large number of people on a baseless judgment is empirically possible.

We must not let ourselves rashly dismiss this argument as resolving the issue at hand on the basis of unreflective Muslim dogma. It is important that we here recall from our earlier discussion of the theological postulates of the science of theoretical jurisprudence⁹ that Islamic speculative theology took great pains to demonstrate the rational tenability of the truthfulness of the Prophet Muhammad and the validity of his mission. These were believed steadfastly to be confirmed by miraculous signs, the occurrence of which was established through a great deal of argumentation that appealed to empirically based observations about the phenomenal world. We should not fault Āmidī and his fellow-theologians for their conviction that their theological dialectic had been successful and that its results could be utilized in other contexts. As far as they were concerned, there was no resort to pure dogma in their critique of the rational argument for the authority of the *Ijmāʿ*. If we concede, for the sake of understanding their point of view better, that the truthfulness of the Prophet Muhammad and validity of his mission are

rationally grounded, then we must regard Āmidī's disjunction as poignant indeed. If one claims that it is empirically impossible for Jews and Christians to agree on an unjustified and erroneous judgment, then one is indeed caught up in a contradiction of a demonstrable truth. The *reductio ad absurdum* has gotten the better of one.

We may now turn to the textual arguments for the authority of the Ijmāʿ, the arguments that appeal to textual indicators, found in the Qurʾān and the Sunna. Since the rational argument has been of no avail and since Ijmāʿic authority cannot, by general agreement among Muslim jurists, itself be established by means of an Ijmāʿic consensus (an approach that can only result in an infinite regress), the textual indicators are all that remain as a basis for Ijmāʿic authority. These in turn prove, upon careful investigation, to be less than fully conclusive, owing to the problems of interpretation they entail. However, they suffice, according to Āmidī, for the building up of sound and considered opinion. In the *Muntahā* Āmidī in fact goes so far as to maintain that the indicators found in the Sunna give rise to opinion (shall we here call it conviction?) that is "so strong as to border on absolute certainty" (*al-zann al-qawī al-muqārib li'l-qatʿ*),²⁰ and in the *Ihkām* he describes these indicators as "the means that come closest to establishing that the authority of the Ijmāʿ is absolutely certain" (*aqrab al-turuq fi ithbāt kawn al-ijmāʿ hujjatan qāṭiʿa*).²¹

In these statements Āmidī seems caught between the point of view of those who regarded the authority of the Ijmāʿ as certain and that of those who regarded it as merely probable (see above). We can perhaps detect here a yearning for certainty about the authority of the Ijmāʿ coupled with an unwillingness, because of the difficulties involved in the interpretation of the indicators in question, to concede full certainty. Looking at the larger context of Āmidī's thinking as a whole, we must consider him as coming down, in the final analysis, on the side of those who regarded the authority of the Ijmāʿ as probable. Āmidī would no doubt have wished to describe that authority as probable in the highest possible degree.

Āmidī regards the Qurʾānic indicators of the authority of the Ijmāʿ as not nearly so forceful as those found in the Sunna and in fact in the *Muntahā* skips them altogether. However, it is clear from his long discussion of the Qurʾānic indicators in the *Ihkām* that he regards them as having an important supportive role, and we should therefore no doubt see Āmidī's overall case for Ijmāʿic authority as resting upon a combination of stronger indicators from the Sunna and weaker though supportive Qurʾānic indicators. While Āmidī is constrained to admit that there is no absolutely conclusive proof in the sacred texts for the authority of the Ijmāʿ, he clearly considers that the cumulative impact of all those indicators that are to be found in the Qurʾān

and the Sunna is such as to convince the intelligent person that the Ijmāʿ carries authority and should be regarded as a valid indicator of the divine law.

The Qurʾānic indicators of the authority of the Ijmāʿ that Āmidī discusses consist of the following five verses:²²

1. "And whoever opposes the messenger after the guidance has become manifest to him and follows other than the believers' way, We appoint for him that to which he himself has turned and expose him to hell—an unhappy journey's end" (4:115).
2. "And hold fast to God's bond, together, and do not scatter" (3:103).
3. "Thus We have appointed you a middle nation, that you may be witnesses against mankind and that the messenger may be a witness against you" (2:143).
4. "You are the best community that has been raised up for mankind. You enjoin right conduct and forbid indecency, and you believe in God" (3:110).
5. "If you should quarrel on anything, refer it to God and the Messenger" (4:59).

Of these verses, Āmidī regards the first two as the strongest Qurʾānic indicators of Ijmāʿic authority, although they are by no means without problems. 4:115 seems to suggest that it is forbidden to follow other than the believers' way, since doing so is subject to the divine threat. Āmidī is confident that we can infer from this that the following of the believers' way is required. But what is the "believers' way"? How can we be sure that it is not simply obedience to the Messenger? What reason do we have for believing that the following of "other than the believers' way" is an act distinct from the act of opposing the Messenger, mentioned in the first part of the verse? Or could not the believers' way simply be their belief, their acceptance of the religion of Islam? What reason do we have for supposing that "believers' way" is a reference to a unanimous consensus of the Muslim community on a rule of law? Āmidī's response to these questions is to insist that "believers' way" must be taken in its most general sense. There is nothing in the context, he argues, that positively compels us to regard the expression as an exclusive reference to either obedience to the Messenger or acceptance of Islam. Therefore, while the expression does not refer specifically to the Ijmāʿ, the Ijmāʿ is included in its general meaning along with obedience to the Messenger and acceptance of Islam.

In the case of 3:103, the problem is that the phrase "God's bond" is not a clear reference to the Ijmāʿ. However, Āmidī argues that it need not be since the phrase "do not scatter" can be interpreted as introducing a separate idea, independent of that introduced by the first part of the verse. As

an independent injunction, "do not scatter" must, owing to the absence of anything in the context that indicates the contrary, be taken in its most general sense as prohibiting *all kinds* of scattering, including scattering that is the opposite of adhering to an Ijmā'ic consensus. The prohibition against scattering can then be turned into a positive requiring of adherence to whatever unites the Muslims, including the Ijmā'.

The three remaining verses entail much more serious problems. According to Āmidī, 2:143 simply establishes that the Muslim community is characterized by trustworthiness, the quality required of all witnesses. Trustworthiness alone does not guarantee that a unanimous consensus of Muslims is an authoritative indicator of the divine law. Thus while others may have seen in the verse an indication of the authority of the Ijmā', Āmidī is more skeptical, although he does see some value in the verse in that it indicates that when the community does reach a unanimous (Ijmā'ic) consensus on anything it will, like any reliable witness, faithfully report this consensus to future generations. As for 3:110, the phrase "commanding the good" is, according to Āmidī, a definite indicator of the authority of the Ijmā', provided "the good" is taken in its most general sense. Āmidī again relies on the principle (discussed later in this book²³) that any word or phrase must be taken in its general sense so long as there is nothing in the context that definitely restricts its meaning. If "the good" is taken in its general sense, then the verse is saying in effect that whatever the Muslim community *qua* community commands is good, that it cannot command anything but the good. Thus the verse adumbrates the infallibility of the community in its collective perceptions of the good, a theme that emerges in the Sunna-based case for the authority of the Ijmā'. However, the probative value of the verse is somewhat vitiated by Āmidī's admission that we cannot be sure that it is not speaking exclusively to those living at the time it was revealed, that is to say, the Companions of the Prophet.

Finally, 4:59 suggests that when there is no quarrel among the Muslims there is no need to appeal to the authority of God and the Messenger. Since an absence of quarreling is indicative of an Ijmā'ic consensus, there is a hint here that the consensus carries some sort of authority. The problem with this way of interpreting the verse is, according to Āmidī, that it does not take into account the functioning of all authority, including the authority of the Ijmā', as a device for putting an end to quarreling. When Muslims establish an Ijmā'ic consensus, they do so with the quarreling of future generations in mind, which they seek to prevent or resolve. Thus the verse would have real probative value only if it added "and the Ijmā'" to "refer it to God and the Messenger."

In summary, we may say of the five Qurʾānic verses that 4:115 and 3:103 suggest fairly strongly, in Āmidī's analysis, that adherence to the Ijmāʿ is required, that 2:143 indicates that the community faithfully reports whatever it agrees upon, that 3:110 affirms the authority at least of the Ijmāʿ of the Companions of the Prophet, and that 4:59 hints at the authority of the Ijmāʿ, although the hint is very faint and not easily defended against contrary interpretations.

It is in the Sunna, we have noted, rather than in the Qurʾān that Āmidī finds the strongest indicators of the authority of consensus.²⁴ The relevant Sunnaic texts (*ḥadīth*) are, Āmidī claims, beyond counting. From this allegedly vast repertoire he singles out the following sayings of the Prophet for special mention:

"My community does not agree on error [*khataʿ*]."

"My community does not agree on error [*dalāla*]."

"God is not one who gathers my community around an error."

"God would not gather my community around an error."

"I asked God not to gather my community around error and he granted [my request]."

"Whatever Muslims deem good is good with God."

"The hand of God is on the congregation [*jamāʿa*]; he does not heed the deviation of those who deviate."

"He whose joy is the well-being of paradise, let him adhere to the congregation, for verily its supplication encompasses those who stand behind, and Satan is with the solitary one."

"Of the two, he [i.e., the solitary one] is the furthest away."

"Until the reign of God appears there will not cease to be in my community a group who have the truth."

"There will not cease to appear in my community a group who have the truth and whom the opposition of opponents does not harm."

"Whoever goes out from the congregation, removing himself one hand-span from it, has removed the noose of Islam from his neck; and whoever departs from the congregation and then dies has died in paganism [*jāhiliya*]."

"Abide by the majority [*alaykum bi'l-sawād al-aʿzam*]."

"My community will be divided into some seventy-odd sects, all of whom will go to hell save one." Someone asked, "Who are this sect?" And he said, "The congregation."

These sayings of the Prophet have, as Āmidī notes, the important credential of being related on the authority of some of the most prominent Companions of the Prophet, such as ʿUmar, Ibn Masʿūd, Abū Saʿīd al-Khudarī, Anas ibn Mālīk, Ibn ʿUmar, Abū Hurayra, Hudhayfa ibn al-Yamān, and others. Though differing in respect to words employed, they all convey, Āmidī

claims, a common meaning, namely, that the community of Muhammad is protected against error. Thus we encounter in these sayings the famous principle of the infallibility of collective deliberations of the Muslim community. It is upon this principle that Āmidī builds his case for the authority of the Ijmā^c. He does not attempt an exegesis of each of the sayings, nor does he indicate the relative weight of each saying. It is clear from the ensuing discussion, as well as from all later discussions of Ijmā^c-related issues in which an appeal to Sunna is made, that the first two of the above-mentioned sayings are always uppermost in his mind.

Before turning to questions having to do with the common meaning of these sayings of the Prophet, Āmidī is obliged first to deal with an objection to the use of these sayings that raises a problem concerning their transmission. All of these sayings, runs the objection, have been transmitted on a scale that is not sufficiently wide to assure us absolutely of their authenticity. The most we can say about them is that their authenticity is probable. We shall later consider at length the subject of the transmission of oral material and its division into two types: widespread transmission (*tawātur*) and transmission through a limited number of transmissional chains.²⁵ Here we may note merely that material whose transmission is of the latter type—material known in Arabic as *khābar al-wāhid*—never allows for full certainty about the authenticity of the material itself. The objection that the sayings of the Prophet under consideration are *khābar al-wāhid* and that their authenticity can only be at best probable has serious ramifications for Āmidī, for he has committed himself to the view that these sayings *come close*, even if they do not quite go all the way, to establishing with full certainty the authority of the Ijmā^c. To use Āmidī's own phrase: the sayings engender "opinion that is so strong as to border on absolute certainty." *Khābar al-wāhid* material can be useful in building up opinion, but Āmidī wants more than opinion in the ordinary sense; he wants opinion of the strongest possible kind. *Khābar al-wāhid* material was not ordinarily considered to be capable of producing such opinion.

Āmidī is unable to deny that each of the sayings, taken in isolation, is *khābar al-wāhid*. He, therefore, in responding to the objection, takes the approach of regarding the common meaning of these sayings as a transmitted datum in its own right. Each saying expresses this common meaning in its own distinctive words. The words as such may be *khābar al-wāhid*, but the meaning, inasmuch as it is common to a great many reported sayings, must be regarded as transmitted on a scale sufficiently wide to assure us of its authenticity. Thus we may be completely certain that the Prophet said *something* to the effect that the Muslim community is protected against error, even if we may not be entirely sure about the words he used to express this idea.

Āmidī follows this argument with a second argument. These sayings, he contends, provided the justification for the appeal to the Ijmāʿ among the first two generations of Muslims, the Companions of the Prophet and their successors, after the death of the Prophet. Had the sayings not been authentic, someone would surely have pointed this out and objected to the practice of appealing to the Ijmāʿ. It is, in other words, empirically impossible—given the large number of first- and second-generation Muslims who lived after the death of the Prophet and given the differing interests, ambitions, and points of view that necessarily existed among them—that they would all have assigned to the Ijmāʿ a role of such great magnitude, that of indicator of the divine law, on the basis of alleged sayings of the Prophet that were in fact spurious. Āmidī stresses the point that he is not here claiming that it is an Ijmāʿic consensus—a unanimous agreement among the Muslims that the sayings in question are authentic—that guarantees the authenticity of those sayings. In responding to an allegation that he is in effect making this claim and that his reasoning is therefore circular in that it bases the authority of the Ijmāʿ on prophetic sayings whose authenticity rests upon the authority of the Ijmāʿ (a clear *petitio principii*), Āmidī explains that in his view the authenticity of Sunnaic material is determined, not by an Ijmāʿic consensus, but on the basis of an inductive investigation into the structural regularities of the phenomenal world, which, as we have noted, are subsumed under the heading of divine “custom.” Āmidī deals at length with the subject of authenticity of transmitted material later in the *Ihkām*,²⁶ and we shall therefore not explore the matter further here.

Two further objections to Āmidī’s second argument require a response from him. First, it is possible that someone among the early Muslims did object to the practice of basing the authority of the Ijmāʿ on the prophetic sayings and that this objection has not been transmitted to us. Second, if these sayings were indeed authentic, it would be empirically impossible that the Companions of the Prophet would not have made known to the next generation of Muslims the “manner of their authenticity” (*tariq al-sihha*), especially considering the importance of these sayings as a basis for an institution of such magnitude as the Ijmāʿ. The phrase “manner of their authenticity” seems to be a reference to the transmissional process: the Companions, in other words, would surely have all said, “We heard the Prophet say such-and-such,” or some such thing, so that the sayings would have become clearly rooted in a large-scale transmission process (*tawātur*) whereby their authenticity would have been guaranteed.

Āmidī answers the first of these objections by appealing again to the divine “custom.” It is impossible, within the phenomenal world as presently

constituted, that a protest against the use of the sayings in question (such a protest itself being, we may note, a publicly observable event) as a basis for a great institution should have gone completely by the board and not have been reported to people of the next generation. Since protests on much less important issues were reported, protests relating to this issue would surely have been reported.

The second objection attempts to turn the tables on Āmidī by a kind of counterappeal to the divine “custom.” Āmidī answers the objection as follows: “It is possible that the Companions may have known that the *hadīth* material in question was authentic and that [these sayings] conveyed knowledge of [i.e., established with full certainty] the immunity of the community from error, not expressly through words [*lā bi-sarīh al-qawl*] but through circumstantial clues [*qarā’in ahwāl*] and hints [*amārāt*].” Āmidī’s meaning here is not easy to make out. Apparently he means to say that it is possible that the Prophet openly declared, in so many words, that the community is protected against error in the presence of only certain individuals (from whom we get the sayings in question) and that the majority of the Companions became certain about his intended meaning, not so much from his actual words (which they did not hear), but from contextual factors that could not easily be reported or, if reported, would be exposed to arbitrary interpretation on the part of later generations. This being the case, it was best that the Companions not make known to the next generation the “manner of authenticity” of these sayings but instead that they leave all future generations to determine the authenticity of the common meaning of the sayings in the manner in which Āmidī himself has been advocating, that is, by reasoning from the structural regularities of the phenomenal world.

We come finally to Āmidī’s discussion of the common meaning itself, which for him, as we have indicated, takes the form of the assertion that the community is, in its collective deliberations, protected against error. Āmidī considers this core of meaning to constitute adequate ground for affirming that the community of Muslims is protected against error in its unanimous agreements upon rules of law and that these rules are for that reason to be considered as constitutive of the divine law. Against this understanding of the import of the common meaning of the sayings, the most serious objections that Āmidī cites have to do with his interpretation of the key term “error” (*khata’*, *dalāla*). The common point of these objections is that there is no reason why we *must* understand the term “error” as including error in the determination of rules of law; it is at least possible that the term may refer to unbelief (in which case the Arabic term *dalāla* is reminiscent of its cognate *al-dāllin* in the opening verses of the Qur’ān), or to erroneous witnessing on

the Day of Judgment, or to error “with respect to what agrees with authentic texts or with the dictates of reason, not with respect to what [is established] by means of scholarly deliberations.” Āmidī responds to these objections with a single argument. It is clear from the sayings, he maintains, that it was the Prophet’s intention to extol the community of Muslims. For Āmidī this intention is, as it were, built into the common meaning of the sayings. All three of the “possible” counterinterpretations of “error” are in fact not possible at all, for they eliminate the ground for extolment; they cancel out the distinctiveness of the Muslim community *qua* community, viz. the special favor which by virtue of these very sayings has been bestowed upon it. The sole ground for this distinctiveness is the community’s immunity from error in the important business of determining collectively through scholarly investigation of the Qur’ān and the Sunna those divinely ordained rules which pertain to the multitudinous situations of everyday life.

It may be noted, while we are on the subject of the immunity of the Muslim community from error, that this immunity—or infallibility, as it is often called—stands in some degree of contrast to the immunity, or infallibility (or protectedness), which the Prophet enjoys. As may be recalled from Āmidī’s discussion of the latter subject, the emphasis in the development of the infallibility theme as it applies to the Prophet is upon protection against acts of disobedience (*al-ma’āsī*) as opposed to mere error. The subject of prophetic infallibility in fact arises within the section of the *Ihkām* which deals with acts of the Prophet in contrast to sayings. In discussions of communal infallibility, the focus of attention is upon those scholarly deliberations which give rise to points of view as to what constitutes the divine law, rather than upon the realm of overt action, and the emphasis is therefore upon protection from error. I wish to stress, however, that the contrast between protection against acts of disobedience, which the Prophet enjoys, and protection against error, which the Muslim community enjoys, has to do with emphasis rather than with any categorical difference. While discussions of communal infallibility focus upon scholarly deliberations that find expression in sayings (*aqwāl*), Āmidī does, let us remember, include “acts” among the possible expressions of consensus, and an erroneous act *can* constitute an act of disobedience. Whenever a consensus finds expression in an act (or datum of behavior), that act necessarily constitutes obedience such that its opposite, *had it occurred* (which is impossible, given the principle of infallibility), would have constituted disobedience. In this sense, the community is, in the logic of Āmidī’s thinking, protected against acts of disobedience. Where an act is not the expression of consensus but reflects a purely individual perception of the divine law, it may be, as we shall see later, erroneous without constituting disobedience.²⁷

On the other hand, the emphasis, in discussions of prophetic infallibility, upon protection against acts of disobedience does not preclude protection against error. Where infallibility is related to prophetic sayings, as opposed to prophetic acts, the emphasis in fact should no doubt presumably be upon protection against error. Again, error is not unrelated to disobedience. Wherever the principle of infallibility is at work, a rule of law, whether expressed in a saying or a datum of behavior, is the law of God, and acts may be considered as acts of obedience or disobedience according to whether they conform or do not conform with that rule. We should also keep in mind that one of the Arabic terms for the "error" under discussion is *dalāla* (literally, "going astray," "errancy"), which often comes close to having the sense of disobedience.

There is, of course, a contrast of greater substance between prophetic and communal infallibility, one that has to do precisely with their basis. That of the Prophet emerges out of the quality of truthfulness as attested by miracle. A prophet cannot lie. Therefore his claim to have heard the divine speech upon the tongue of the Angel must be accepted at face value, and whatever representations of that speech he conveys to his audience must be regarded as fully authentic, as entirely devoid of fabrication. Accordingly, infallibility as it relates to recitations and sayings of the Prophet Muhammad was not an issue *among Muslims*: it did not need to be discussed. Consequently, the subject of infallibility arises as an issue only in connection with the Prophet's acts. Here the concern is primarily with the question of what was or was not consistent with the affirmation of the Prophet's truthfulness as mediator of divine revelation. On this differences among Muslims were possible: some allowed a limited degree of disobedience. For the majority, however, the greater part of the Prophet's behavior was necessarily—as a safeguard of the truthfulness principle—protected against disobedience or errancy such that it could be regarded as an indicator of the divine law.

The infallibility of the community, by contrast, rests entirely on divine or prophetic dictum, not upon any quality attested by miracle, such as truthfulness. The validity of the divine or prophetic dictum is of course linked to miraculously attested truthfulness, so that indirectly the authority of the *Ijmā'* is contingent upon prophetic truthfulness. On the other hand, we must not fail to note that the very idea of protection of the community against error implies truthfulness on the part of the community. But this is a truthfulness attested, not by miracle, but by divine or prophetic dictum.

Two final points relating to the authority of the *Ijmā'* are in order before we proceed to other matters. It is important, first of all, that we distinguish that authority, as well as the authority of the *Qur'ān* and the *Sunna*, from

another kind of authority recognized by Muslim jurists— the authority that individual mujtahids bear as expounders of the divine law to the great mass of nonmujtahids or “commoners” (ʿawāmm), who constitute the bulk of Muslim society. According to the theory that we shall explore more fully later, an opinion concerning the divine law that an individual mujtahid arrives at by dint of his deliberations over the relevant indicators is authoritative for any commoner who attaches himself to the mujtahid as a follower, thus in effect adopting the mujtahid’s “school” (*madhhab*, literally, “way”), but the opinion is not authoritative for other mujtahids, however much they may wish to take it into account in carrying on their own deliberations.²⁸ An Ijmāʿic consensus, on the other hand, carries an authority that is directed primarily to mujtahids. This authority, however, is future-oriented. At the time of the emergence of the consensus, those participating in its making are not submitting to any authority; they are, to the contrary, *producing* an authoritative doctrine through their freely undertaken independent deliberations. Once formed, an Ijmāʿic consensus puts an end to all such deliberation in the future. For that reason, the authority of such a consensus is commonly seen by Muslim jurists to be operative, not vis-à-vis the generation that produced it, but vis-à-vis mujtahids of future generations. An opinion of an individual mujtahid, however authoritative for commoners, can never bring a halt to further deliberation.

The second point to be noted is that the failure, noted earlier in this chapter, of Muslim jurists to reach a consensus upon the authority of the Ijmāʿ in no way impedes the functioning of that authority. Āmidī makes it very clear that the authority of consensus cannot itself rest upon a consensus, since this would entail a *principio principii*. Therefore, even if there were, or had ever been, a demonstrable consensus upon the authority of the Ijmāʿ, this would not make the slightest difference as far as the issue of authority is concerned. The authority of the Ijmāʿ must, as we have seen, be determined entirely on the basis of Qurʾānic and prophetic dicta. If the community cannot reach a consensus on the issue of Ijmāʿic authority, this is because its members do not all interpret the relevant dicta alike.

For this reason, the principle of Ijmāʿic authority is able to function quite satisfactorily *as a principle* (its implementation, which is quite another thing, entails problems that we shall consider in due course) even though upheld only by a majority of Muslims, not by all, although it will of course so function only for the majority that upholds it. In fact, there is no need even for majority support in order for the principle of Ijmāʿic authority to function satisfactorily, so long as there are some—if only very few—who accept the principle. For the determination of the existence of an Ijmāʿic consensus on a

particular rule of law is always in the first instance an act of individual scholarship. Even among the members of the majority who do in fact accept the principle of Ijmā'ic authority, some may affirm the existence of an Ijmā'ic consensus on a particular rule and others may deny it.

Whether or not an Ijmā'ic consensus exists, or has existed at some point in the past, is thus normally a matter of opinion; when an individual holds the opinion that an Ijmā'ic consensus on a certain rule exists, that consensus will be authoritative only for him and for any others who share his opinion. For them the consensus will end all discussion of the rule (unless the consensus leaves some aspect of it ambiguous or undefined) *as far as they are concerned*. Since the others will, however, continue to carry on discussion, the supporters of the consensus will be constrained to enter in, since so long as their point of view has not become universally accepted they will be bound to defend it vis-à-vis others. Only if the existence of an Ijmā'ic consensus on a particular rule was agreed upon by all would discussion necessarily cease.

Having completed his case for the authority of the Ijmā', Āmidī has defended it against the last and, from the point of view of inter-Muslim dialectic, most serious of the three challenges to its very viability. The possibility, knowability, and authority of the Ijmā' may now be regarded as assured beyond reasonable doubt; what remain to be considered are issues that assume the tenability of the basic principle of Ijmā'ic authority and focus rather on problematic aspects of that principle that the inter-Muslim debate thus far considered has left unresolved. In Āmidī's discussions of many of these further issues, the sayings of the Prophet that were at the center of attention in the discussion of the authority of consensus continue to play a key role. Whenever he makes use of these sayings, he reiterates an interpretive principle we have already encountered: since there is nothing in the context that requires that we limit the sense of these sayings, especially of terms such as "community" and "error," we must take them in their most general sense. We shall consider this principle as a subject in its own right in a later chapter.²⁹ There we shall come to realize that "context" potentially covers the entire body of authoritative texts.

The fourth through the thirteenth issues are, we have noted, concerned with the persons who are involved in the making of an Ijmā'ic consensus. We shall consider first the issues (four to seven, nine to twelve) concerned with the qualifications of those persons and then later turn to the two issues concerned with their number.

The fourth issue is really a composite of two separate issues:³⁰ must the participants in the Ijmā'-making process be Muslims and must they be contemporaries of each other, that is to say, co-members of one and the same

generation? According to Āmidī, there is unanimous agreement upon an affirmative answer to each of these questions among those who accept the principle of Ijmāʿic authority. There is thus no inter-Muslim dialectic on these issues, and we may regard them as in effect nonissues. Āmidī apparently mentions them for the sake of the record, so to speak. The rational argument for the authority of the Ijmāʿ had, we may remember, in effect set up an Ijmāʿ that could be established by either Muslims or non-Muslims. This was, in fact, an important weakness of the argument, a reason why it could not be ultimately convincing for Muslims. Now Āmidī wishes to affirm explicitly that the Ijmāʿ is an exclusively Muslim phenomenon. That this is so is indicated by the language of the relevant prophetic sayings: they speak only of Muhammad's community. As for the requirement that the participants in the formation of a particular Ijmāʿic consensus be contemporaries of each other, this is implied in the unanimous rejection by advocates of the principle of Ijmāʿic authority of the transgenerational character of the unanimous agreements that constitute the Ijmāʿ. Again, it appears that Āmidī must make note of this for the sake of the record. The term "community" could, after all, have reference to the body of all Muslims who have lived, are living, and will live up to the Day of Resurrection. Āmidī rejects this interpretation as applicable to sayings of the Prophet upon which the authority of the Ijmāʿ is based on logical grounds. A transgenerational consensus could not have functional authority, since it could arise only on the Day of Resurrection; and there will be no need for an authoritative consensus on that Day.

With the fifth issue we return to the arena of actual inter-Muslim dialectic.³¹ The issue is whether the participants in a particular Ijmāʿic consensus must all be mujtahids. To state the issue along the lines of Āmidī's own statement: are commoners—that is to say, nonmujtahids—qualified to participate in the making of an Ijmāʿic consensus such that their views must be taken into account, along with those of mujtahids, in determining whether an Ijmāʿic consensus exists, or is it the mujtahids alone who are able to bring about such a consensus? The majority of those jurists who advocate the principle of Ijmāʿic authority, says Āmidī, affirm the latter, and it was to suit this majority that Āmidī first defined the Ijmāʿic consensus as an agreement among mujtahids before offering an alternative definition reflecting the view of those who insisted on including commoners among the consensus-makers. This majority view, I have suggested, represents a survival of the conception of consensus that, according to Schacht, had prevailed in the "ancient schools."

Significantly, Āmidī takes a stand against the majority view, affirming his preference for the consensus of the Muslim community as a whole as over

and against that of mujtahids alone. In doing so, he claims as an ally the famous Ash'arī theologian al-Bāqillānī. The minority view goes back, as we have observed, to Shāfi'ī himself. In looking at the arguments supporting the majority view, we may at first be easily tempted to think that it has the stronger case. A commoner is, by general agreement, duty-bound to follow uncritically whatever the mujtahids say. A true Ijmā'ic consensus cannot arise out of such a posture. Rather, it is supposed to arise out of scholarly deliberation upon indicators found in the Qur'ān and the Sunna, and only mujtahids are capable of such deliberations. Any view that a commoner might express will therefore be devoid of a proper basis in divine revelation and will on that account constitute error. If a commoner is so prone to error, it is inconceivable that he could be part of a body of people that is immune from error in its collective deliberations. (Mujtahids may be said to be liable to error but not prone to it.)

Notwithstanding the apparent force of these considerations, Āmidī has a cogent reply. To begin with, the sayings of the Prophet on which the authority of the Ijmā' is based speak only of a consensus of the Muslim community, and commoners are as much a part of that community as mujtahids. If the advocates of the Ijmā' of mujtahids argue that the meaning of "community" in these sayings must be restricted to mujtahids because of the considerations just mentioned, then it may be shown that these considerations do not have the force that the opposition supposes; for they do not show convincingly why the participation of commoners cannot be a requirement for the conclusion of an authoritative Ijmā'ic consensus. True, the commoners ordinarily are duty-bound to follow unquestioningly what mujtahids say, but this in itself is not what gives the statements of mujtahids of a particular generation authority vis-à-vis the mujtahids of all following generations and assures that those statements are protected against error. An Ijmā'ic consensus indeed must be preceded by scholarly deliberations over indicators found in the Qur'ān or the Sunna and only mujtahids are capable of such deliberations, but it is not these deliberations as such, or the competence of the mujtahids to carry them out, that makes the statements of mujtahids authoritative and immune against error, for such deliberations are in and of themselves, notwithstanding the skills they entail, liable to error even if their results are more reliable than the uninformed and gratuitous guesses of commoners. What *does* make the statements of mujtahids authoritative vis-à-vis mujtahids of subsequent generations is the fact that they represent a consensus of the community *by virtue of the concurrence of commoners*.

Thus, notwithstanding the considerations raised by the opposition, it remains fully conceivable that the results of collective scholarly deliberation

remain liable to error and nonauthoritative for future mujtahids until such time as the commoners of the community, relieved of the duty of unquestioning acceptance of scholarly opinion and adopting an atypical posture of independent reflection, freely espouse (rather than merely submitting to) those results, thus giving them the status required by the plain language of the Prophet's sayings, namely, that of a consensus *of the community*. Āmidī is clearly not worried about the mysteriousness that surrounds the consensus-making process so understood. His primary concern is adherence to the Prophet's sayings. So long as those sayings can be taken in their unqualified general sense without entrapment in a clear logical absurdity (and Āmidī is sure that no such entrapment will occur), they must be so understood, no matter what difficulties may arise with respect to the consensus-making process.

Although Āmidī insists that the participation of commoners is essential to the constitution of an authoritative Ijmāʿic consensus, he regards the participation of mujtahids as equally essential. This can be inferred from the position he takes on an issue that arises later in the *Ihkām*: whether it is possible for any generation of Muslims to be devoid of mujtahids. Āmidī's view is that this is possible only if the generation in question is confronted with no novel cases calling for the discovery of hitherto undiscovered rules; when such situations arise, mujtahids must be present to deal with them. This suggests that without the presence of mujtahids the expansion of the community's understanding of the divine law cannot occur and an authoritative Ijmāʿic consensus, which presupposes such an expansion, cannot arise.

While the fifth issue raises the question of whether nonmujtahids are eligible for participation in the consensus-making process, the sixth issue touches upon the mujtahids themselves.³² If a mujtahid of unlimited competence—that is to say, a *mujtahid mutlaq*—holds an opinion concerning the divine law that is in reality an innovation of his own, is he by virtue of the innovation disqualified from being included among the participants in an Ijmāʿic consensus? Innovation is the advancement of an opinion on a religious matter that is not the result of sustained and conscientious scholarly deliberation upon relevant indicators. Where there has been maximal effort in the deliberation upon the indicators, an individual mujtahid's opinion will always be considered as a reasonable expression of the divine law, even if it differs from that of other mujtahids. A mujtahid, incidentally, will not necessarily always put forth effort worthy to be called *ijtihād*. Although the term *mujtahid* is a cognate of *ijtihād*, the mark of a mujtahid is not the actual occurrence of *ijtihād* but the eligibility (or capacity: *ahliya*) to attempt *ijtihād*. In debating the issue of innovation, Muslim jurists apparently had special concern

for the *mujtahid mutlaq* since he claimed to be able to form original opinions on all matters pertaining to the divine law without any recourse whatsoever to the standard doctrine of the “schools” (*madhāhib*) to which most Muslims belonged. A *mujtahid mutlaq* might thus, in his eagerness to cover the entire spectrum of legal questions, be tempted to form opinions hastily without putting forth the effort of which he is capable.

Āmidī includes himself among those who hold that an innovating *mujtahid* is a full participant in the consensus-making process so long as his innovation does not entail outright unbelief, for unbelief would place him outside the community of Muslims. The innovation may even constitute an iniquity (*fisq*) and still not disqualify the *mujtahid* so long as he has not crossed over into unbelief. Āmidī defends his view on the basis of a principle that is of the utmost importance for his jurisprudential thought considered as a system. When a *mujtahid* says that he has put forth maximal effort (*ijtihād*) in deliberating over indicators, then so long as he appears to be telling the truth—and his being a *mujtahid* will certainly give this appearance—we must take him at his word.

But, says the opposition, if the innovation constitutes an iniquity, the appearance of telling the truth vanishes, for an iniquitous person can never be presumed to tell the truth. Responds Āmidī: iniquity destroys the appearance of telling the truth only if the iniquitous person is aware of his iniquity. What concerns us here is the *mujtahid* who must be *presumed* to have put forth in good conscience maximal scholarly effort (whether in fact he has or not) and therefore to have been unaware that the opinion he arrived at was iniquitous.

Āmidī and those who share his point of view are obviously concerned to give every *mujtahid* the benefit of any doubt that might arise concerning the thoroughness and conscientiousness of his scholarly deliberations. *Ijtihād* is, after all, a subjective phenomenon. Only the *mujtahid* can know directly through introspection whether he has put forth maximal effort. Others can know this only indirectly, that is to say, on the basis of the *mujtahid*'s own statement about himself. If we have no reason to question the truthfulness of the *mujtahid*'s statement, then we must defer to his appearing, as a respected member of the scholarly community, to be truthful. Any iniquity that may attach to his opinion on the divine law does not in any way infringe upon his *mujtahid* status, his eligibility to attempt *ijtihād*, since iniquity does not, unless the *mujtahid* is patently aware of it, constitute an adequate ground for rejecting the truthfulness of the *mujtahid*'s statement about himself. (A *mujtahid*'s awareness of the iniquitousness of his own opinion could presumably be known only from his own admission or overt behavior.) Therefore,

if I suspect any mujtahid of innovation, iniquitous or otherwise, but have no ground for rejecting the truthfulness of the mujtahid's claim to have put forth maximal effort, I must set aside my suspicion and regard the mujtahid as a full participant in any consensus whose existence I am trying to determine.

The seventh and ninth issues are somewhat interrelated in that both have to do with the Ijmāʿ of the Companions of the Prophet. The Zāhirī school had, according to Āmidī, maintained that only the Ijmāʿ of the Companions was authoritative, that all other generations of Muslims were barred from the Ijmāʿ-making process by a lack of an essential qualification: membership in the original generation of Muslims, which had been in direct contact with the Prophet. Āmidī notes that according to one tradition Ibn Hanbal also held this opinion, which suggests that it had had some support within earlier *ḥadīth* circles. The seventh issue arises out of the debate between advocates of this opinion and the majority of jurists, who oppose it:³³ did the Companions alone have the prerogative of establishing an authoritative Ijmāʿic consensus or not? In the ninth issue it is not any such *exclusive* prerogative of the Companions that is under discussion but their superiority over other generations: does their Ijmāʿ have, by virtue of this superiority, a status higher than that of subsequent generations, specifically the generation that followed them? Again, we find the name of Ibn Hanbal connected with the view that accords a higher status to the Companions. This adds further confirmation of a bias, within *ḥadīth* circles, in favor of the Companions.

The case for the exclusive authority of the Ijmāʿ of the Companions, as recorded by Āmidī, rests heavily upon an interpretation of the prophetic sayings cited earlier—those that affirmed the community's immunity from error—that insisted that the term "community," as used in those sayings, can refer only to the community in existence at the time the sayings were uttered, that is to say, the community made up of the Companions. The argument for this interpretation was that the Companions were the only generation of Muslims who *in their time* (and prior to the emergence of the second generation of Muslims) constituted the Muslim community in its entirety. Therefore, only in their time could a true Ijmāʿic consensus, a consensus of the entire Muslim community, be achieved. By contrast, the Muslims of any subsequent generation could not be considered as constituting the Muslim community in its entirety apart from those Muslims who had existed previously. The argument thus in effect sets up a disjunction: in referring to the "community," the Prophet had in mind either those Muslims who constituted the entire community from the perspective of his audience or those Muslims who constituted the entire community from the perspective of later generations. But since the Prophet said that the community was protected against error in what it agreed

upon, he could not have had the latter in mind, since they, being a composite of the living and the dead, were incapable of reaching agreement on anything. Therefore, he must have had the Companions in mind.

We have earlier encountered the interpretation of "community" as a timeless entity inclusive of all generations throughout past, present, and future, which would be gathered together only on the Day of Resurrection, an interpretation that, apparently, no one seriously espoused, although Āmidī felt he must refute it. Here we have a retrospective understanding of "community," one that is relative to the perspective of a particular generation and embraces that generation along with all previous generations but not future generations. This understanding represents a convenient device, among the dialecticians, for demonstrating the impossibility of any Ijmā'ic consensus save that of the Companions. The alternative understanding, on the other hand, does not serve the cause of Ijmā'ic authority at all, since it renders all Ijmā'ic consensus impossible.

It may be noted that this approach to the interpretation of the prophetic sayings avoids any explicit expression of favoritism toward the Companions but seeks rather to rest its case upon logical considerations. If the Prophet was really saying that the consensus of the community is infallible, he would surely have had in mind a consensus that could actually take place. We may assume, however, that proponents of this argument were motivated largely by pro-Companion favoritism. The extolment of the Muslim community, which by widespread agreement was the intention behind the prophetic sayings, could easily be applied exclusively to the Companions.

Āmidī's criticism of the interpretation of "community" as an exclusive reference to those present at the time of the utterance of the prophetic sayings is that it in effect renders the Ijmā' of the Companions itself nonfunctional. In order to appreciate the force of this criticism, we must bear in mind that the Ijmā' could not become operative at all until after the death of the Prophet, since during the twenty-year period of revelation there was no need for an authority other than that of the Qur'ān and Sunna, both of which were in process of being revealed and could therefore provide solutions to situations as they arose. If we assume that the Prophet's sayings regarding the immunity of the community from error were scattered throughout the period of revelation, then we may consider *all* the Companions of the Prophet to be constitutive of the community in existence at the time of the utterance of the sayings, as opposed to the Companions who were alive at a particular point during the period of revelation.

This would mean that after the death of the Prophet a genuine Ijmā'ic consensus could be concluded only so long as all the Companions of the Prophet

were present. Since, however, some of the Companions would have died well before an occasion for such a consensus could arise, the consensus turns out to be an impossibility. This amounts to making nonsense of the Prophet's sayings, which no Muslim can allow. Since the proposed interpretation of "community" thus collapses, Āmidī is able to hold out his own interpretation as the only viable one: "community" must refer to all those Muslims (some would say mujtahids) who are alive at any given moment. Since the Prophet's sayings make no mention of the Companions in particular and since any body of Muslims alive at a particular moment represents the "community," whether they are Companions or not, there is no way to interpret the sayings except as meaning that the *Ijmāʿ* of Muslims (or mujtahids) living at any given moment is protected against error.

Āmidī mentions several counterarguments of the opposition. One in particular bears mentioning. In order for an *Ijmāʿ*-ic consensus of a particular generation to function as an authoritative indicator of the divine law, it must be possible for subsequent generations to know that it existed. This requires that a mujtahid of a subsequent generation have a knowledge of the opinion of each individual participating in the consensus, for if he is ignorant of the opinion of a single participant he cannot be regarded as knowing that the consensus occurred. Obviously, such a mujtahid would find it impossible to determine the opinion of every single mujtahid, much less every Muslim (as those who include commoners among the consensus-makers would require), of any previous generation save that of the Companions. For the Companions were a compact community about whom it is possible, if not necessarily easy, to acquire the requisite information, unlike the following generations of mujtahids, or Muslims, who were much more numerous and more scattered over the face of the earth. Therefore, even if it be conceded that generations after that of the Companions are capable of arriving at a consensus that is, according to the prophetic sayings, immune from error, such a consensus could never be known to generations thereafter and could therefore never have a functional authority.

In response to this argument, Āmidī simply refers his reader back to his discussion of the second *Ijmāʿ*-related issue, in which he replied to a similar argument. There the opponent contended that it is empirically impossible for an *Ijmāʿ*-ic consensus of *any* generation to be known to subsequent generations. Here the opposition makes an exception of the first generation of Muslims but applies the argument to all other generations. In the discussion of the second issue, Āmidī let his case for the knowability of a consensus of any group no matter how large rest upon what he considered to be an incontrovertible example of a known consensus of a large group—the consensus of

Jews and Christians to the effect that Muhammad is not a true prophet. The example may raise important questions in our minds, but for Āmidī it suffices as a weapon in a strictly inter-Muslim dialectic. Even if the knowledge of the consensus of a particular generation of Muslims still seems to Āmidī's adversaries to be extremely unlikely, this unlikeliness need not worry him; for it is not the unlikeliness of this knowledge (given the great difficulties in acquiring it) that can destroy Āmidī's argument but only its impossibility. The empirical possibility of such knowledge is therefore all that he needs to establish.

In the controversy over the ninth issue,³⁴ the pro-Companion bias emerges in a slightly different form, which does not seem to deny the authority of the Ijmā' of subsequent generations. The issue is whether a consensus of the Companions can be considered Ijmā'ic and authoritative if a Muslim of the second generation—that is to say, a Successor (*tābī'ī*)—who had become a qualified mujtahid disagreed with it. In other words, is the opinion of the second-generation Muslim equal in value to that of the Companions so that it must be taken into account in determining whether an authoritative Ijmā'ic consensus exists? Āmidī's view, which is that of the majority of jurists, is that it is equal in value since the second-generation mujtahid is as much a part of the community that, by prophetic declaration, is protected against error as are the Companions. Without the agreement of the second-generation Muslim, a consensus "of the community" has not emerged. The opposing view seems to suggest that the Companions have some sort of special prerogative with regard to the Ijmā'—so long as a body of Companions exists they and only they may form an authoritative opinion, and members of the second generation can have their turn at Ijmā'-making only after the generation of Companions has disappeared from the scene. Whether this same waiting for the demise of the entire second generation of Muslims is required for the third generation and so on down through the generations is not discussed. Possibly there is a special concern here with the generation of Companions owing to their having had direct contact with the Prophet, a privilege not given to any subsequent generation. It no doubt seemed highly improper to some Muslim jurists that the opinion of a second-generation Muslim, who had no direct contact with the Prophet, should be given weight equal to that of Muslims who had such contact and in many cases associated extensively with the Prophet.

But to the majority of those jurists who advocated the principle of Ijmā'ic authority it no doubt seemed a dangerous compromise of that principle to concede a special status to the Ijmā' of the Companions. Would this not undermine the authority of the Ijmā' of later generations? The case for

the noninclusion of second generation mujtahids along with Companions in the Ijmāʿ-making process in any event rested upon a weak foundation. For example, proponents of this view cited prophetic sayings such as “You must abide by my Sunna and, after I am gone, by the Sunna of the Rightly Guided Caliphs” and “My Companions are like [guiding] stars; whichever of them you follow, you will be rightly guided.” Such sayings, argues Āmidī, have nothing to do with the Ijmāʿ of the Companions; they do indicate that merit carries a kind of authority and that the views of *individual* Companions are, by virtue of the greater merit of the Companions, authoritative for non-Companions. But the greater merit of the Companions does not in itself guarantee the immunity from error of which the Prophet spoke and upon which the authority of the Ijmāʿ rests. The prophetic declarations (“My community will not agree upon error,” etc.) accorded immunity from error to the community, not on the basis of merit, but solely by virtue of its being Muhammad’s community. Any authority that merit brings thus belongs to a different plane from that of the authority of the Ijmāʿ. The former is not an authority that altogether disallows disagreement on the part of any qualified mujtahid; only the latter can truly silence mujtahids. We must further bear in mind that among the Companions there were degrees of merit and that the more meritorious among them exercised authority over the less meritorious. The first four caliphs were, in fact, exalted to the highest office in Islam by virtue of their greater merit, according to Sunnī belief.

The tenth issue touches upon an idea closely related to that of the exclusively authoritative Ijmāʿ of the Companions.³⁵ Mālik ibn Anas is said to have accorded a special position to the Ijmāʿ of the people of Medina. Among his followers different views arose as to what he meant. According to some, he meant that the Medinese transmission of *hadīth* material carried more weight than the transmission of non-Medinese; according to others, he meant that the Ijmāʿ of the people of Medina merited special consideration but did not prevent mujtahids from disagreeing with it; according to a third opinion, the phrase “people of Medina” meant for Mālik the Companions of the Prophet in their entirety. If this last opinion is the correct one, then the issue that Mālik’s statement raises is identical with the eighth issue. If either of the first two opinions is correct, then Mālik’s view appears not to constitute a real challenge to the standard Sunnī conception of the authority of the Ijmāʿ.

In the ensuing discussion of the tenth issue, however, Āmidī seems to be refuting the idea that the Ijmāʿ of the people of Medina, as distinct from the Companions of the Prophet, is authoritative. The phrase “people of Medina” seems to have reference to actual inhabitants of Medina. These were, of course, for the most part originally Companions of the Prophet. But Āmidī makes it

clear that the category of Companions of the Prophet does not entail the criterion of current habitation in Medina, since many Companions, soon after the death of the Prophet, migrated to other regions and could no longer be counted among the inhabitants of Medina in the postprophetic era when the authority of the *Ijmāʿ* in theory became operative. Apparently, judging from Āmidī's discussion, some followers of Mālik attached authority of the sort that silenced mujtahids (the sort at issue in discussions of the authority of the *Ijmāʿ*) to the *Ijmāʿ* of the inhabitants of Medina in the postprophetic era. This is the point of view that seems to underlie the arguments that Āmidī reviews and then refutes. One of these contends that since the transmission of *ḥadīth* material by the people of Medina takes precedence over the transmission of other Muslims it follows that the *Ijmāʿ* of the people of Medina is authoritative for all others. In other words, the superior knowledge of the Sunna that their proficiency in *ḥadīth* transmission entails qualifies them to be makers of an authoritative *Ijmāʿ*ic consensus. Āmidī is constrained in his refutation to take special pains to show why *riwāya* (the rote knowledge of the *ḥadīth* material) is not the same thing as *dirāya* (the understanding of the divine law that comes through scholarly disputation). But Āmidī's main argument is, as always, that the plain language of the Prophet's sayings concerning the immunity of the community against error requires us to regard that community as consisting of all Muslims (or mujtahids) living at a given moment in time.

In the eleventh and twelfth issues,³⁶ the attention of the disputing parties shifts from the *Ijmāʿ* of the Companions, or the people of Medina, to the *Ijmāʿ* of certain other categories of people within the community of Muslims. To some extent these issues follow from the discussion of whether the *Ijmāʿ* of the Companions as opposed to that of the larger community consisting of both Companions and second-generation Muslims or the *Ijmāʿ* of the people of Medina as opposed to the larger community consisting of both Medinese and non-Medinese Muslims carries authority. Proponents of the *Ijmāʿ* of the Companions could try to find support in the Prophet's sayings about the immunity of the community from error through their own kind of interpretation of those sayings. Proponents of the *Ijmāʿ* of the people of Medina (unless this expression meant for them the Companions) could not make profitable use of those sayings. With the advocacy of the *Ijmāʿ* of other groups among the Muslims we seem to be presented with a complete departure from the idea of the *Ijmāʿ of the community*. Since authority beyond that of the Qur'ān and the Sunna was associated in the thinking of many Muslim jurisprudents with the idea of the *Ijmāʿ*, there was, it appears, a tendency to regard the special authority of certain Muslims, people possessing greater merit than the others, as having something to do with the *Ijmāʿ*.

Thus Shīʿīs, according to Āmidī, saw the authority borne by ʿAlī and the Imāms of his line as connected with a “consensus of the Prophet’s Household [*ahl al-bayt*].” We earlier learned that the Shīʿīs rejected the idea that the Ijmāʿ of the community carried intrinsic authority; here we discover that they retained the concept of the Ijmāʿ but restricted the authoritative Ijmāʿ to the Prophet’s Household. Since each of the Imāms is individually, according to Shīʿī belief, protected against error, this Ijmāʿ of the Prophet’s Household existed by virtue of the inability of the infallible Imāms to contradict one another. It was furthermore necessarily a transgenerational and cumulative Ijmāʿ extending from ʿAlī to the Twelfth Imām (or, in the case of the Ismāʿīlis, to the present Imām). The eleventh issue pits the Shīʿīs against the Sunnī advocates of the authority of the communal Ijmāʿ, with the Sunnīs quite naturally having the last word. An important bone of contention in the discussion is the Prophet’s statement, “Verily I leave with you two things of great importance so that if you hold fast to them you will not go astray: the Book of God and my Household.” Āmidī notes that this saying was usually transmitted with “and my Sunna” in place of “and my Household.” However, even if “and my Household” is authentic, it is possible that the Prophet was referring to the role of members of his Household (his descendants through Fātima and ʿAlī) as transmitters of *hadīth*, not as establishers of an authoritative Ijmāʿ.

Among the Sunnīs, on the other hand, there were some who saw the special authority of the Rightly Guided Caliphs and of the first two in particular (Abū Bakr and ʿUmar) as constituting Ijmāʿic authority. The twelfth issue, therefore, is whether a consensus of the first four caliphs or of the first two carries the kind of authority that the majority of jurists attribute to the Ijmāʿ of the community, that is to say, the kind of authority that disallows disagreement on the part of mujtahids. Here again we seem to be encountering a tendency to want to associate all authority beyond that of the Qurʾān and the Sunna, even that of special groups within the Muslim community, with the idea of the Ijmāʿ. But again the case for an Ijmāʿ other than that of the community rests, in Āmidī’s judgment, on flimsy grounds—mostly very tendentiously interpreted sayings of the Prophet—and Āmidī is able to dispose of it in less than a single page.

Having discarded association with the Prophet (and consequent merit), habitation in Medina, kinship with the Prophet, and caliphal status as qualifications for participation in the Ijmāʿ-making process, Āmidī has yet another matter pertaining to the participants in this process, other than qualifications, to tend to—namely the matter of number. *How many* persons are required for the establishment of an authoritative Ijmāʿic consensus? This question

breaks down into two separate questions. Is a majority of those qualified to participate in the Ijmā^c-making process—that is to say, mujtahids, according to the common view (which, as we have seen, Āmidī rejects in favor of inclusion of commoners)—sufficient to establish an authoritative consensus or must the full number of all qualified persons, without exception, participate (the eighth issue)? Must the number of participants be sufficient to rule out the possibility of collusion (the thirteenth issue)?

Most jurists, Āmidī tells us,³⁷ agree that a majority is not sufficient to establish an authoritative consensus. Āmidī is sure, therefore, that when the Prophet declares that the community cannot agree upon error he is referring to a plenary agreement, not an agreement of the majority. But the strongest proof for the requirement of full participation, he feels, comes from the example of the Companions of the Prophet. They, he maintains, did not condemn individuals within their ranks who disagreed with the view of the majority on particular matters. If the majority view carried the kind of authority that is associated with the Ijmā^c, the kind that allows no disagreement, then those Companions who took the majority view would surely have censured the dissenting individuals. It is in fact empirically impossible that they would not have done so.

It is clear from the general tenor of Āmidī's discussion that, while he does not attempt to define the concept of a majority in precise numerical terms, he and other Muslim dialecticians have in mind what speakers of English would call an overwhelming majority, as opposed to a bare majority or any majority faced by a sizeable minority. The majority under discussion seems to be definable as "all except a few." The Arabic term used in this discussion for the dissenting minority, *al-aqallūn*, in fact conveys the sense of "the few." It is, however, perhaps not quite as strong as another word that sometimes appears in Āmidī's accounts of disputations, *al-shādhdh*, best rendered as "very few".

The advocates of the Ijmā^c of the majority quite naturally took exception to the interpretation espoused by Āmidī of the Prophet's declaration of the immunity of the community against error. If the people of a community with the exception of a few individuals do something, we do not hesitate, they insisted, to say that the community has done that thing. This in fact reflects ordinary usage of the term "community." Furthermore, the Prophet's statements about the immunity of the community from error must be balanced with statements such as "Abide by the greater throng," "Be careful not to deviate," and "Satan is with the solitary one but is distant from two," all of which indicate that dissenting minorities are charged to submit to the view of the majority.

Āmidī's response to this interpretation of the Prophet's sayings is to argue that when people speak of the actions of a majority as the actions of the community they are using the term "community" in the *majāz* mode, since, taken in its literal sense, the term applies properly to the entire aggregate of its members barring none. If the Prophet is using the term in the *majāz* mode, we need something in the context to show us that this is so; in the absence of such a contextual clue, we must assume (as always when the question of whether an expression is *haqīqa* or *majāz* is under discussion) that the Prophet is using the term in its literal sense. As for the three prophetic sayings quoted above, the first two can be interpreted to mean that once a consensus is formed people in the future must adhere to it; they do not indicate the presence of dissenters at the time of the establishment of the consensus. The third saying can be taken as an exhortation to seek a companion when traveling.

Of the further counterarguments that the advocates of the majoritarian principle put forward, one takes us back to the question of the knowability of an Ijmāʿic consensus dealt with earlier. A plenary consensus can never be known, since one can never hope to know the views of every last person qualified to participate. No matter how much information one may have, one can never be sure that it is complete, that there are not at least one or two dissenting individuals who have escaped notice. A consensus of a majority, on the other hand, does not present this problem. Āmidī's reply is that it *does* present the same problem, that the argument in effect undercuts the position it is intended to defend. For a majority, like the entire community, is a large group—if a consensus of the latter is unknowable, so is the consensus of the former. But in fact both are knowable, for reasons that Āmidī has given earlier.³⁸

The second of the two questions relating to the number of participants in an authoritative Ijmāʿic consensus takes us back to Āmidī's discussion of the basis of the authority of the Ijmāʿ (the third issue).³⁹ In that discussion we were apprised of a rationalist approach to the defense of Ijmāʿic authority, one that employed the idea of a "large number" of people, sufficient to guarantee that the people could not have had shared motives for agreeing upon a rule of law for which there was no clear justification. Now we are told that those who adopted this approach made the "large number" a condition (*shart*) for the establishment of an authoritative Ijmāʿic consensus. The Prophet's sayings about the immunity of the community from error do not, it is true, explicitly stipulate this "large number," but we can infer that the Prophet must have had it in mind from the fact that the survival of Islam in its uncorrupted form through time was contingent upon an ongoing process of foolproof transmission of the Qurʾān and the Sunna—and such transmission

can take place only through a community large enough to preclude collusion. Since the Muslim community would always therefore consist of the requisite "large number" of people, the principle upon which the rationalist argument depended would necessarily always be operative.

Āmidī in response does not question the belief that the number of Muslims must always be sufficient to guarantee foolproof transmission. Instead, he contends that the number of mujtahids, who are not essential to the transmission process, may be less than the number in question, and they are the ones through whom, according to the majority of those who accept the authority of the Ijmā^c, an authoritative Ijmā^cic consensus comes into being. This argument, it should be noted, is based on an assumption—that the consensus of the mujtahids apart from commoners is authoritative—that Āmidī, as we have seen, does not accept. Just what sort of response to the rationalist way of thinking under consideration, if any, might be developed for those who include commoners in the Ijmā^c-making process is something that Āmidī does not touch on.

It is extremely important for Āmidī's overall system of jurisprudential thought that the concept of the authoritative Ijmā^c be divorced from the concept of the "large number." We shall, however, consider later the reasons why this is so.⁴⁰

Throughout his discussions of the fourth through the thirteenth Ijmā^c-related issues, Āmidī has been endeavoring, as we have seen, to maintain faithfulness to those prophetic dicta that are for him the ultimate foundation of the very authority of the Ijmā^c. He is convinced that those dicta require him to affirm that it is the consensus of *all responsible Muslims* that is authoritative and that Muslims are, so far as the Ijmā^c-making process is concerned, equals no matter how much they may differ from each other in other respects. They do differ in respect to their roles in the Ijmā^c-making process: the mujtahids carry on an essential function as scholars from which the commoners are barred, while the commoners provide the additional concurrence that is necessary to produce a truly community-wide consensus. But mujtahids and commoners do not differ from each other in respect to the final impact they have on the Ijmā^c-making process: both bring an absolutely essential ingredient to the process.

The only persons that Āmidī would exclude from the Ijmā^c-making process are those who cannot be considered responsible before God for their actions: children who have not yet reached the age of responsibility and the mentally incapacitated. Āmidī does not provide a justification for the exclusion of these categories since, in the context of inter-Muslim dialectic, a justification is not required: no one proposes that these categories be included.

But this is as far as Āmidī is willing to carry the process of exclusion. The operative prophetic sayings do not, in his judgment, allow him to go further. For this reason he must reject all conceptions of the *Ijmāʿ* that entail further exclusions, including even that embraced by the majority of jurists—the conception of the *Ijmāʿ* as a consensus of mujtahids. All less widely accepted conceptions, needless to say, must also go: those that limit *Ijmāʿ*-making to the Companions, the people of Medina, the Household of the Prophet, the majority, and a number sufficient to rule out collusion.

The fourteenth, fifteenth, and sixteenth issues, we have said, are concerned with the *Ijmāʿ*-making process itself. Āmidī states the fourteenth as follows:⁴¹ if a mujtahid formulates a rule he believes to be applicable to a particular case and the people of his time are all aware that he has done so and none object to what he has done, does this constitute a true *Ijmāʿ*ic consensus on the rule? To put the question differently: is community-wide silence in response to a newly propounded formulation of the divine law constitutive of an *Ijmāʿ*ic consensus on that formulation? Āmidī does not need to deal with the situation in which a number of mujtahids, few or many, espouse a given rule while the rest, knowing of the rule, remain silent, since any answer that relates to the situation described in the question will cover this situation as well. Judging from Āmidī's account, this issue did not pit a majority against a dissenting minority, as has been the case with the *Ijmāʿ*-related issues thus far considered. Here the parties to the dispute seem to be more or less equally balanced. Those who reject the notion of a tacit *Ijmāʿ*ic consensus—one constituted by means of silence—are, of course, in effect affirming that such a consensus is constituted only through verbal expressions of opinion on the part of all concerned.

Āmidī considers the most viable opinion on the issue at hand to be that of Abū Hāshim, the famous Muʿtazilī thinker. In the *Ihkām* Āmidī describes Abū Hāshim as holding that the silence under discussion may be regarded as amounting to an authoritative statement of the divine law but not as constitutive of an authoritative *Ijmāʿ*ic consensus. The *Muntahā* is somewhat clearer: Abū Hāshim's position is that the silence is not constitutive of an *Ijmāʿ*ic consensus with which disagreement is forbidden but carries the kind of authority that allows disagreement. Āmidī himself has no hesitation in speaking of the silence as constitutive of a "tacit *Ijmāʿ*ic consensus" (*ijmāʿ sukūti*) but insists that this consensus carries only probable authority (*hujja zannīya*), that is to say, authority with which disagreement is permitted. We may recall here that Āmidī has earlier divided jurists who accept the authority of the *Ijmāʿ* into two groups: those who regard that authority as probable and those who regard it as certain. Āmidī here indicates that he is willing to accept the idea

of a tacit Ijmā'ic consensus so long as it is clearly understood that its authority is only probable. As will be recalled, however, there are strong suggestions in his discussion of the issue of the authority of the Ijmā' (third issue) that he regarded that authority as probable. We may at this point conjecture that where the Ijmā' arises out of explicit statements on the part of all participants its authority carries a higher degree of probability than is the case where the Ijmā' is constituted by means of silence.

Āmidī feels constrained to grant authority to the tacit Ijmā' for the following reasons. No mujtahid who was aware of a rule formulated by another mujtahid would have failed to examine the basis or justification of the proposed rule, since this is the custom among mujtahids, who are continually disputing with each other. Therefore, we may presume from the silence of mujtahids with respect to a formulated rule known to them all that they had carried on the usual investigations and found nothing objectionable in the formulation; in short, we may presume that they all agreed with it. Had they objected, then it is empirically impossible that they would have remained silent.

Āmidī is fully aware of the objections that may be leveled against the idea of a tacit Ijmā'. Perhaps the mujtahids were silent because they had not yet undertaken their examination of all the indicators that were relevant to the proposed rule, or because they were in the process of deliberating on those indicators, or because they feared that their opposition to the proposed rule would provoke internecine strife, or because each thought the other would express objection to the rule and as a result no one spoke up. Or perhaps the other mujtahids did express their objection to the proposed rule but word of this has not come down to us. Āmidī is unable to deny categorically that these possibilities exist and can only take refuge in what he regards as what is *usually* observable among most mujtahids—they do not ordinarily remain silent in the face of formulations of the divine law that they regard as faulty; it is not characteristic of them, generally speaking, to go to the trouble of examining the indicators that are relevant to a particular formulation of the law and then refrain from speaking up when they find themselves in disagreement with it. This being true, then when mujtahids do not speak up we may presume that they have no objection to the formulated rule but rather agree with it. Āmidī's underlying contention here is that mujtahids are much more likely to be silent in the face of formulated rules with which they agree than they are to be silent in the face of formulated rules with which they disagree. Therefore, silence creates the likelihood but not the certainty of an Ijmā'ic consensus.

In his discussion of the sixteenth issue (to be considered presently), Āmidī points out that some jurists (among whom he includes himself)

believed that a tacit *Ijmā'*ic consensus cannot be considered as fully constituted until after all the participants—the mujtahid (or mujtahids) who verbally propounded the rule under consideration along with all those who responded with silence—have died. This condition was deemed necessary precisely on account of the possibilities mentioned above: silence could mean that a mujtahid had not completed, or even begun, his scholarly deliberations and therefore was not ready to declare his agreement or disagreement with the proposed rule; or it could mean that he was temporarily held back from expressing his view by some sort of constraint. In view of these possibilities, an *Ijmā'*ic consensus should not be regarded as definitely constituted until after all those whose views were to be counted had died. Presumably, during the time between the initial formulation of the rule and the death of all those who were living when the rule was first formulated the requisite deliberations would have taken place such that silence could be regarded as the final posture of all concerned and therefore as constitutive of an *Ijmā'*ic consensus.

One can see immediately that there are problems here that only reinforce Āmidī's denial of the certainty of any tacit consensus. How can one really know whether the individuals concerned had all completed the requisite deliberations by the time of their death? What about the case of individuals who died soon after the initial formulation of the judgment? How can their silence be given weight equal to that of individuals who lived for many years thereafter? If a lapse of time is going to be required for the constitution of an *Ijmā'*ic consensus, why then limit participation to those who were qualified to participate at the time the rule was first formulated? In other words, why exclude individuals who became qualified to engage in scholarly deliberations during the lapse in question? To include these others would, of course, result in an endless process that would never give rise to a consensus. But the arbitrariness of drawing a cut-off line is one of the problems with the idea of a tacit *Ijmā'*.

The fifteenth issue pertains to situations in which a mujtahid has formulated a rule of law but the formulated rule has not become universally known among his contemporaries.⁴² Can we presume, in the absence of any voiced objection, an *Ijmā'*ic consensus upon the rule? Āmidī indicates that the jurists were divided over this issue, with the majority taking the position that no *Ijmā'*ic consensus may be presumed in this case. One gathers that the minority insisted that voiced objection was the sole acceptable basis for overturning a presumption in favor of tacit consensus and that the denial of such a consensus on the grounds that some mujtahids were unaware of the newly formulated rule entails the unwarranted assumption that had they known

about the rule they would have objected to it. In any case, Āmidī quickly demolishes this way of thinking by insisting that where silence cannot be presumed to betoken actual agreement with the newly formulated rule it cannot be constitutive of the Ijmāʿ.

The last of the three issues relating to the Ijmāʿ-making process (the sixteenth) is whether the establishment (*inʿiqād*, “final conclusion”) of an Ijmāʿic consensus is conditional upon the demise of all the participants.⁴³ We have already noted that some jurists regarded this condition as definitely applicable to the tacit Ijmāʿ. It is not this application that is the major concern in the sixteenth issue but rather the application of the condition to the Ijmāʿ as constituted by means of verbal declarations or other overt actions on the part of all participants. Āmidī links only two names with the view that an Ijmāʿic consensus of the latter type (it is not clear whether they would have included the tacit Ijmāʿ as well) is not fully constituted until after the death of all the participants: Ahmad ibn Hanbal and Abū Bakr ibn Fūrak. The majority of jurists, he says (mentioning in particular Shāfiʿis, Hanafis, Ashʿarīs, and Muʿtazilis), reject this condition, maintaining that an Ijmāʿic consensus is fully constituted in the moment in which the participants first indicate their acceptance of a particular rule either by verbal declaration or by overt action.

Āmidī sides with the majority view, arguing that when the people living at a particular moment of time (*ʿasr*, “age”) agree upon a rule as being applicable to a novel case (*hāditha*) they alone constitute the whole community in the moment of encounter with that case, so that their agreement *in that moment* is, by virtue of the prophetic sayings that speak of the protection of the community against error, protected against error. There is no need, therefore, to wait until the participants in the consensus have passed from the scene.

The chief problem that the advocates of the posthumous Ijmāʿ have with the majority view arises from a consideration of the perspective of each individual involved in the Ijmāʿ-making process. The Ijmāʿ absolutizes—freezes for all time, so to speak—the opinion that the individual happens to have at the moment, thus ruling out the possibility of revision or complete change of mind, which is the prerogative of every mujtahid. A mujtahid may, during the course of his entire scholarly career, change his mind time and time again. When he does so, it is because he has discovered new indicators or has come to understand previously discovered indicators in new light. He will therefore regard his new opinion as superior to the old one, and his entire career as a continual progression toward a better and more mature understanding (*fiqh*) of the divine law. To absolutize the opinion of the moment therefore seems to be an unjustified interference with the integrity of the scholarly process.

Furthermore, it contradicts the Qurʾānic saying, “Thus We have appointed you a middle nation, that you may be witnesses against mankind” (2:143). Since a witness is one whose charges against another are accepted as authoritative, the verse is saying in effect that Muslims stand over others as bearers of authority but not over themselves. If we say that the opinion of an individual mujtahid is absolutized by means of an *Ijmāʿ*ic consensus so that he can never abandon it in favor of what he considers to be a superior opinion, we are making the mujtahid a bearer of authority over himself.

Āmidī takes refuge from all such objections in his sense of the plain meaning of the prophetic sayings that speak of the immunity of the community from error. True, an *Ijmāʿ*ic consensus emerges out of the opinions of individuals that would, in the absence of a consensus, very possibly give way to new opinions. But the whole point about the *Ijmāʿ* is that, no matter how tentative the opinions that give rise to it may seem to be, it stands on its own as something that, by virtue of the prophetic sayings just referred to, is protected from error. It is not the opinions of mujtahids per se that are protected from error but rather the *Ijmāʿ* *qua* *Ijmāʿ*. As for the Qurʾānic verse cited, one cannot strictly speaking conclude from the statement “that you may be witnesses against mankind” that the Muslims cannot be witnesses against themselves. Thus the use of this verse to show that the opinions of mujtahids cannot, by an *Ijmāʿ*ic consensus, acquire authority over the mujtahids themselves is invalid.

We come now to two issues (the seventeenth and eighteenth) that have to do with the relationship between the *Ijmāʿ* as an authoritative indicator of the divine law and the two superior repositories of indicators, the Qurʾān and the Sunna.⁴⁴ Āmidī has earlier made it clear that the authority of the *Ijmāʿ* must be grounded in either the Qurʾān or the Sunna and has demonstrated that it in fact has such a grounding, the strongest indicators of *Ijmāʿ*ic authority being the Sunnaic statements about the immunity of the community’s consensus against error. It is the necessity of this grounding that renders the *Ijmāʿ* inferior to—that is to say, dependent on—the Qurʾān and Sunna.

But to say that the *Ijmāʿ* is dependent upon the Qurʾān and/or the Sunna for its authority is not to say that it is dependent upon them *in every respect*. One can still raise the question whether the *Ijmāʿ*, given that it possesses an authority properly grounded in the Qurʾān and/or Sunna, depends upon these repositories of revelation in its functioning as an indicator of particular rules of law. Can an authoritative *Ijmāʿ*ic consensus on a particular rule of law arise without there being some sort of indicator of the rule that gives rise to the consensus? In other words, is it possible for an *Ijmāʿ*ic consensus to function as an indicator of the divine law without itself being based on some sort

of indicator (seventeenth issue)? If the answer is that there must be such an indicator, then a further question arises: can the community reach an infallible consensus on the basis of fallible scholarly deliberation (*ijtihād*) over the indicator or on the basis of analogical deductions (eighteenth issue)?

To say that an Ijmā'ic consensus on a particular rule of law need not be based on a preexisting indicator of that rule is to say in effect that an Ijmā'ic—that is to say, an authoritative—consensus on such a rule may arise independently of divine revelation (in the strict sense of “what was sent down,” *munazzal*), for the indicators of the law, other than the Ijmā', are either themselves part of “what was sent down” or analogies drawn therefrom. If an Ijmā'ic consensus upon a particular rule of law may arise without being based on any indicator that exists prior to the consensus itself, then the consensus may be said to function as an indicator entirely on its own without any demonstrable grounding in divine revelation. This does not mean that the consensus will be based on some sort of rational perception of the law, since according to mainline Sunnī thinking the law of God was not, as we have seen, discernible to the unaided human intellect. Rather, it means that the consensus comes about through direct assistance from God, that God sees to it that the community agrees upon what is indeed a rule of his law without the help of revelation. It may be recalled here that Muslim epistemology, influenced by theological interests, affirmed that God could, if he wished, create the knowledge that we acquire through logical demonstration (the syllogism) as necessary knowledge so that we would not have to derive it from premises. Given the notion of continuous creation and divine freedom, the assertion that God creates in the minds of Muslims a knowledge of his law in moments when they are in unanimous agreement with one another was certainly theologically tenable.

The majority of jurists, says Āmidī, held that no true Ijmā'ic consensus could arise except out of consideration of an indicator. To hold otherwise was, in their thinking, to suggest that each individual involved in the consensus was able to ascertain the divine law without recourse to revelation, for a consensus is after all nothing but a concurrence of findings of individuals. But it was generally agreed that individuals could not discover the divine law independently of revelation, that is to say, without consideration of indicators. Āmidī is unconvinced by this way of thinking. One must, he says in effect, draw a distinction between what individuals ascertain in the context of an Ijmā'ic consensus in which they all have a part and what they ascertain in the absence of an Ijmā'ic consensus. The consensus, in other words, makes all the difference: the Prophet's sayings about its infallibility attest that this is so. In the absence of an Ijmā'ic consensus, individuals may ascertain, or form

an acceptable opinion about, the divine law only with reference to indicators: there is no other way. In the presence of an *Ijmāʿ*ic consensus, the situation changes radically: now individuals, by virtue of their agreement with one another, are raised to a higher plane of apprehension of the divine law and may in consequence ascertain that law without recourse to divine revelation.

On the other hand, *Āmidī* is not convinced that one can go so far as to say that an *Ijmāʿ*ic consensus can only be a true indicator of the divine law in the absence of any prior indicators. Those who held this view argued that if an *Ijmāʿ*ic consensus is based on a prior indicator it is in effect superfluous, since the indicator suffices in and of itself. But, responds *Āmidī*, if we consider such a consensus as functioning as an indicator in place of the prior indicator so that people may thereafter refer to it and thus spare themselves the effort of searching for the indicator, or if we consider that an *Ijmāʿ*ic consensus sometimes gives certainty to a rule of law when the prior indicator is less than certain, thus making adherence mandatory, we soon realize that the consensus is far from superfluous. Furthermore, says *Āmidī*, the attempts that some have made to show that there have been actual instances of an *Ijmāʿ*ic consensus that emerged without consideration of indicators can be shown to be unsustainable.

Āmidī in the end adopts a view that involves a slight degree of hedging. As neither party in the debate is able to provide a decisive argument for its position, we are not able, says *Āmidī*, to say confidently whether it is possible for an *Ijmāʿ*ic consensus to arise among Muslim mujtahids without being based on an indicator. However, if a consensus *was* to emerge without consideration of an indicator—*Āmidī* clearly regards this as purely hypothetical—we would be constrained, by virtue of the prophetic sayings that speak of the immunity of the Muslim consensus against error, to regard it as a true instance of the authoritative *Ijmāʿ*.

Among those who insist that an *Ijmāʿ*ic consensus must be based on an indicator the further question (alluded to above) then arises: may such a consensus emerge out of the opinions that mujtahids arrive at as a result of their deliberations over indicators and their analogical deductions? Indicators, let us remember, may be either conclusive (*qatʿī*) or inconclusive but productive of opinion (*zannī*). Some jurists, we now learn, allowed for the emergence of an *Ijmāʿ*ic consensus on the basis of conclusive indicators but not on the basis of inconclusive indicators. Judging from the context of *Āmidī*'s discussion of *Ijmāʿ*-related issues as a whole, we are to divide the remaining jurists into two groups: those who allowed for the emergence of an *Ijmāʿ*ic consensus on the basis of either conclusive or inclusive indicators and those who allowed for it only on the basis of inconclusive indicators. The

latter group could not countenance the idea that an Ijmā'ic consensus would ever replace a conclusive indicator; any indicator of the law that is clear and not subject to diverse interpretations would surely be transmitted from generation to generation. When such an indicator is available to a particular generation, there will, of course, be unanimous agreement on the rule of law that it signifies. However, so long as the indicator continues to be available, the agreement will carry no authority in and of itself; people will rather look to the indicator as the authoritative basis of the rule. This attitude, as may be recalled, goes back to Shāfi'ī, who refused to let an Ijmā'ic consensus serve as a substitute for a lost Sunnaic text, conveying the gist but not the actual words of the Sunna. With the inconclusive indicator, on the other hand, there seems to be a meaningful role for the Ijmā' to play: it can accord absolute authority—authority that silences mujtahids and ends discussion—to what, solely by virtue of being based on the indicator, possesses no such authority.

One problem with the idea of an Ijmā'ic consensus rooted in scholarly opinion, according to those who reject this idea, is that it flies in the face of social reality; for experience tells us that it is impossible for a large group of people, given the different proclivities that exist among them, to agree on anything on the basis of mere opinion. We have encountered this objection before, in the discussion of the first Ijmā'-related issue, where we may also find Āmidī's reply: the possibility of such a consensus can be demonstrated by showing actual cases. In this earlier discussion, the objection under consideration was raised by disputants who denied altogether the possibility of the Ijmā'. According to them, if there is a conclusive indicator for a rule of law and it is transmitted from generation to generation, a consensus will not arise because of the absence of any need for one, whereas if there is an inconclusive indicator a consensus will not arise because of the sheer impossibility of an agreement. Here a different line of thinking is before us: a unanimous consensus can only emerge where there is a conclusive indicator, and when it does it serves as a substitute for the indicator (*pace* those who deny that it can serve in this capacity). One gathers that the idea of substitution of an Ijmā'ic consensus for an indicator, as a result of which the consensus itself becomes an indicator, provided the only justification for the retention of the principle of Ijmā'ic authority on the part of those who insisted that an Ijmā'ic consensus must be based on a conclusive indicator. To insist that the conclusive indicator would necessarily be transmitted from generation to generation and that it was totally irreplaceable was in fact to destroy altogether the *raison d'être* of the Ijmā'.

The denial that an authoritative Ijmā'ic consensus can emerge out of scholarly opinion amounted to an undermining of the role of mujtahids in

the Ijmāʿ-making process, for a mujtahid is by definition one who strives for a reasonable opinion concerning the divine law. To say that the Ijmāʿ can only emerge on the basis of a conclusive indicator is to deprive the mujtahid of any vital role, for a conclusive indicator is, among other things, an indicator that is widely disseminated within the community such that its authenticity cannot be doubted; while mujtahids are certainly aware of such an indicator, they are not necessarily the only ones to have this awareness. The same goes for the understanding of what the indicator signifies: this, too, by virtue of the clarity of the indicator, is available to the community at large or in fact to all those familiar with the Arabic language. The issue at hand is precisely whether the Ijmāʿ can emerge out of *ijtihād*. It is therefore not surprising that the majority of jurists, according to Āmidī, say that it can, since it is the majority view that the authoritative Ijmāʿ is primarily a unanimous agreement of mujtahids. While many within this majority may have accepted the notion of an Ijmāʿic consensus based on a conclusive indicator along with the notion of an Ijmāʿic consensus based on an inconclusive indicator, some perhaps did not; and the former no doubt in any case saw the Ijmāʿic consensus based on the inconclusive indicator—the consensus resulting from *ijtihād*—as more typical as well as more important.

The central problem that the conception of the Ijmāʿ as a product of *ijtihād* posed for its critics was that it seemed to entail a claim that something possessing absolute authority could emerge out of something possessing no such authority; for most of those who conceived of the Ijmāʿ in this manner did indeed regard it as having authority of the kind that disallowed future disagreement on the part of mujtahids. Furthermore, it seemed to the critics that to say that the Ijmāʿ emerges out of the opinions of mujtahids amounts to assigning absolute authority (*hujja muttabaʿa*) to mere opinion, thus contradicting the generally accepted principle that mujtahids are always free to disagree with the opinions of their fellows. In responding to these qualms, Āmidī makes it clear that they betray a failure to grasp the main point of the case for the authority of the Ijmāʿ as based upon prophetic dicta—the Ijmāʿ changes the situation categorically. Through the Ijmāʿ what was otherwise devoid of absolute authority (the opinions of mujtahids) *acquired* such authority: that is what the principle of Ijmāʿic authority is all about. As for the principle that mujtahids may disagree with the opinions of their fellows, this should not be taken as giving license to disagreement in all situations but only in those situations where an Ijmāʿic consensus has not intervened.

But the issue of whether it is possible for an authoritative Ijmāʿic consensus to emerge out of the opinions of mujtahids does not represent the whole

of the eighteenth issue. That issue turns out, in Āmidī's discussion, to be a composite of three separate issues, the one just considered plus two further issues. First, has an authoritative Ijmā'ic consensus ever actually emerged out of the opinions of mujtahids? Second, is the authority of such a consensus absolute such that mujtahids may not thereafter hold contrary opinions? On both of these further issues the jurists are, as with the first issue, divided. Āmidī takes the view that there are many instances of the actual emergence of an authoritative Ijmā'ic consensus out of the opinion of mujtahids and that such a consensus carries absolute authority.

The instances Āmidī cites to prove the first point are instructive. Most Muslim jurists who spoke of the Ijmā' as being among the authoritative indicators of the divine law had in mind, let us remember, a consensus that *mujtahids produced*, not merely by taking cognizance of the obvious but by toiling arduously (*ijtihād*) over the ambiguous and the uncertain in the search for a reasonable opinion. If this consensus, even if acknowledged to be possible, could not be shown actually to have come about at some point in the history of Islam, its value would be considerably diminished, if not eliminated altogether. It is therefore crucial to the case for the Ijmā' that, once its possibility has been established, its actuality as historical event be demonstrated. This, of course, presupposes the knowability of any Ijmā'ic consensus that has come about, which Āmidī has already established.

Āmidī's examples are as follows:⁴⁵

1. The Companions of the Prophet agreed on the Imāmate of Abū Bakr as a result of *ijtihād* in the course of which some reasoned that since the Messenger of God had chosen him to lead them in worship they should choose him to lead them in daily affairs, while others reasoned that if they appointed him as the Imām they would find that, as he was physically weak and threatened by death, he would be strong in his adherence to God's commands.
2. The Companions agreed to fight against those who refused to pay *zakāh* as a result of *ijtihād* in the course of which Abū Bakr reasoned that the payment of *zakāh* had to be considered a basic duty of Islam since it is inseparably linked in the Qur'ān to the duty of performing the ritual prayer (*salāh*).
3. The Companions agreed that pork fat is forbidden on the grounds that it must be treated as analogous to lean pork meat, which is clearly forbidden.
4. The Companions agreed on the pouring out (*irāqa*, i.e., discarding) of sesame oil and syrup into which a mouse had fallen and died on the

- grounds that such oil and syrup is analogous to butter into which a mouse had fallen and died, which is definitely to be poured out.
5. The Companions agreed to appoint Khālīd ibn al-Walīd as their commander in a certain area as a result of *ijtihād*.
 6. The Companions during the caliphate of ʿUmar agreed that the punishment for drinking grape-wine would be eighty lashes as a result of *ijtihād* in the course of which ʿAlī reasoned that “if one drinks one gets drunk, and if one gets drunk one rambles, and if one rambles one lies; therefore the one who drinks should receive the punishment of the one who bears false witness,” while ʿAbd al-Rahmān ibn ʿAwf reasoned that, since the drinking of grape-wine is definitely among the acts that are subject to one of the prescribed punishments (*hudud*), its punishment should be assumed to be the least severe of those punishments, which is eighty lashes.
 7. The Companions agreed upon the penalty for hunting at times when hunting is forbidden, the amount of the compensation for the shedding of blood, the amount of the support money owed to a close relative, and the requirement that a prayer-leader and a judge be trustworthy—all as a result of *ijtihād*.

Āmidī adds to this list of examples the phrase “and the like” (*wa-nahwa dhālik*), suggesting that he could have given further examples but refrained from doing so because there was no need: his readers could supply further examples on their own. It may be noted that the seventh item in the list includes three separate examples so that Āmidī has given us, in all, ten actual instances in which an Ijmāʿic consensus emerged out of a process of opinion-formation or *ijtihād*. He also indicates the reasoning that went on in the minds of participants in five of these instances. With the other five we are to assume that a similar sort of reasoning took place; perhaps Āmidī assumes that well-informed readers would be so familiar with these instances that the details of some of them did not have to be supplied.

Two points may be noted with respect to Āmidī’s examples. The first is that he draws all of them from the age of the Companions. We are in fact hard put to find any examples of the Ijmāʿ in Āmidī’s writings that do not involve the Companions. (I am speaking here of the authoritative Ijmāʿic consensus, not the sort of consensus between dialecticians that ends a debate, of which more will be said presently.) One wonders why examples from later periods are not given, since Āmidī subscribes to the belief that an Ijmāʿic consensus may arise in any age. Perhaps the reason is that the examples from the age of the Companions would receive wider acceptance than examples he might give from later periods. There was, of course, no need for unanimous

acceptance even of these examples, and no doubt they were disputed at least by some. I have previously made note of the fact that an Ijmā'ic consensus cannot resolve any issue *pertaining to the Ijmā' itself*; therefore, even if there was a consensus supporting these examples, the consensus in and of itself would prove nothing. The examples had to stand on their own feet as demonstrably actual historical events.

This leads me to the second point. Āmidī does not attempt to provide grounds for affirming the historicity of his examples. As with information relating to the Prophet, he lets mere citation suffice, assuming either that his reader is familiar with the chain of transmitters behind each example or knows how to determine that chain or that the examples belong to the category of information that is so widely disseminated as to be beyond doubt. If the former is the case, then one could, of course, argue that none of the examples are completely beyond doubt. But Āmidī could easily respond to that with an argument already familiar to us: there are so many of these examples that even if each taken in isolation can be doubted they cannot all be regarded as specious; therefore, we cannot doubt the central piece of information they all have in common—that the Companions agreed on rules of law as a result of a process of opinion-formation. While Āmidī does not bring out these points explicitly, we know that they are typical of his thinking and most certainly are presupposed by the examples of the Ijmā' that he gives. Still, we must allow for the possibility that some Muslim dialecticians may well have disputed these examples, and Āmidī would surely have faced opposition had he attempted to give examples from later periods. It is important, therefore, that we keep in mind that the determination of the existence of any Ijmā'ic consensus is, as I have previously stressed, an act of *individual* scholarship and in no way depends upon unanimous agreement among mujtahids.

As for the conviction that an Ijmā'ic consensus that emerges out of a process of opinion-formation bears absolute authority, Āmidī bases this on those prophetic sayings that speak of the immunity of the Ijmā' of the community from error. If these sayings are taken in their plain sense without qualification, they must be regarded as embracing all kinds of Ijmā'ic consensus: those based on conclusive indicators (and entailing no *ijtihād*), those based on inconclusive indicators (and entailing *ijtihād*), and even those based on no indicators at all (although, as we have learned, Āmidī knows of no evidence that the third kind has ever occurred and is undecided as to whether it is possible for it to occur). Otherwise stated, Āmidī's argument is that the prophetic sayings in question make no mention of *ijtihād* as a ground for rejecting the authority of an Ijmā'ic consensus.

I have assumed that Āmidī considers his examples of the emergence of the Ijmāʿ out of *ijtihād* of the Companions as cumulatively sufficient to eliminate doubt, though each in itself may leave room for doubt. Later in his discussion of Ijmāʿ-*related* issues Āmidī takes on the question of whether one may affirm the existence of a *particular* Ijmāʿic consensus on the basis of isolated accounts that are not numerically sufficient to eliminate doubt (the twenty-sixth issue).⁴⁶ Āmidī's examples, let us bear in mind, are intended to establish, not the existence of any particular Ijmāʿic consensus among the Companions, but rather the existence among them of the *practice* of agreeing upon rules of law as a result of *ijtihād*. He does not, in his discussion of the seventeenth issue, take up the question of whether there are sufficient accounts of each particular Ijmāʿic consensus that arose among the Companions to eliminate doubt about its actual occurrence. In the twenty-sixth issue the focus of attention shifts to the case of an Ijmāʿic consensus for which the accounts are definitely not sufficiently numerous to eliminate doubt. Here the interest is not confined to the generation of Companions but rather embraces all generations of Muslims. The issue is whether an Ijmāʿic consensus whose existence is probable though not entirely beyond doubt may be considered as "standing firm" (*thābit*), that is to say, as having the force of an indicator of the divine law, as worthy of consideration on the part of the mujtahid. Considering that few if any instances of the Ijmāʿ—especially among Muslims of generations after that of the Companions—could be regarded as more than probable, we must surely regard the issue before us as one of enormous consequence for Islamic theoretical jurisprudence, notwithstanding the brevity of Āmidī's discussion of it.

Āmidī indicates no majority opinion on this issue. Instead, we seem to have more or less evenly balanced sides. Some Shāfiʿīs ("our associates": more frequently this refers to Ashʿarīs, most of whom were in any case Shāfiʿīs) and Hanafis and apparently all Hanbalīs affirm the operativeness of the probable Ijmāʿ, while other Shāfiʿīs (including Ghazālī) and Hanafis deny it. This division of opinion is obviously related to another division of opinion we noted earlier: whether the authority of the Ijmāʿ is probable or certain. We also noted that the Muslim dialecticians divided the issues they debated into issues admitting of a sure resolution (*masā'il qat'iya*) and issues admitting only of a probable, or opinion-based, resolution (*masā'il zanniya*). Both the issue of whether the Ijmāʿ was an authoritative indicator of the divine law and the issue (presently before us) of whether a particular Ijmāʿic consensus whose existence was only probable could be regarded as operative might be placed in either of these two categories, depending on the point of view of the individual dialectician. We seem to be able to divide the Muslim

dialecticians into two major camps, a rigorous camp that considered both of the above-mentioned issues to be *mas'ala qat'īya* and a liberal camp that considered both to be *mas'ala zannīya*. In other words, the rigorous camp insisted that the authority of the Ijmā^c, if it is to be functional at all, must be certain and that no particular Ijmā^cic consensus may be treated as a valid indicator of the divine law unless its historicity is entirely beyond doubt, while the liberal camp was, in the face of what appeared to be somewhat inconclusive indicators, willing to settle for an Ijmā^c whose authority was merely probable and proceeded to base formulations of the divine law upon instances of the Ijmā^c whose historicity was likewise merely probable.

In advancing their position on the twenty-sixth issue, members of the liberal camp make use, in Āmidī's account of the debate, of two arguments. First, they refer to the saying of the Prophet, "We judge [that is to say, formulate the divine law] on the basis of what is apparent; the secret things are in God's hands." The term "apparent" (*zāhir*), they say, includes in its meaning the Ijmā^cic consensus whose historicity is merely probable. "Apparent" and "probable" (*zannī*) are, in fact, synonymous for Āmidī. Second, they draw an analogy between the probable Ijmā^c and the probable Sunna. Just as sayings and deeds of the Prophet whose historicity is probable are nonetheless authoritative indicators of the divine law, so, too, is any instance of Ijmā^c whose historicity is probable an authoritative indicator of the divine law.

Members of the rigorous camp respond with the argument that if the probable instance of the Ijmā^c—the instance whose occurrence is reported in isolated accounts that are not numerically sufficient to eliminate all doubt—is to be included among the indicators of the divine law (*usūl al-fiqh*) there must be a clear justification for doing so, just as there must be a clear justification for including analogies and probable information about the Prophet among the indicators of the divine law. Such a justification must consist either of an Ijmā^cic consensus that is entirely beyond doubt or of a statement from the Qur'an and the Sunna that is entirely beyond doubt. But no such justification is to be found; therefore, the Ijmā^cic consensus whose historicity is merely probable must not be included among the indicators of the divine law. It should be noted that inclusion of Ijmā^cic consensus among the grounds for including the probable Ijmā^cic consensus among the indicators of the divine law is not necessarily circular; we are not here faced with a *petitio principii*. In the thinking of the rigorous camp, the Ijmā^cic consensus whose historicity was absolutely certain and whose import was absolutely clear carried authority by virtue of something other than a consensus. As will be recalled from our earlier discussion of the authority of the Ijmā^c, some Muslim dialecticians based that authority upon rational considerations that they believed

engendered certainty about it. This may have been the trend of the rigorous camp, although some may have considered (unlike Āmidī) the prophetic sayings about the Ijmāʿ to be productive of complete certainty. Whether the authority be based on rational considerations or on prophetic dicta, it was, for the rigorous camp, always the authority of the Ijmāʿic consensus whose historicity was beyond doubt that was decisive. It was perfectly possible, from their point of view, that a sure consensus, in the sense just explained, could constitute a ground for regarding the unsure but probable consensus as an indicator of the divine law. This was possible, in their view, but not in fact the case.

Āmidī concludes his discussion of the twenty-sixth issue with the statement that the entire issue is reducible to a question of whether one may regard something as an indicator of the divine law only *on condition* that one have a basis for doing so that is absolutely sure and conclusive. Those who insist upon this condition do not, Āmidī tells us, accept the Ijmāʿic consensus whose historicity is only probable; those who waive this condition accept that consensus. Āmidī lets us know in the very last sentence of his discussion that he sides with the latter. As we shall come to appreciate ever more fully as we proceed, his methodology for the attainment of an understanding (*fiqh*) of the divine law assigns a central role to opinion and probability.

We may now backtrack to the nineteenth through the twenty-first issues, which are centrally concerned with the limitations that a particular Ijmāʿic consensus may place upon future scholarly deliberations. In his phrasing of these issues, Āmidī employs the expression *ahl al-ʿasr*, “people of a particular age”: what limitations does *their* consensus place upon those who come after them (*man baʿdahum*)? This language suggests a concern with the limitations that one generation may, through consensus, place upon subsequent generations. However, we should recall that many Muslim dialecticians regarded an Ijmāʿic consensus as fully constituted in the moment of initial agreement (rather than after the demise of all the participants). For them, *ahl al-ʿasr* would have reference to the people living at a particular moment in time, the moment of initial agreement. They would thus be faced with the question, not only of the limitations placed by an Ijmāʿic consensus upon future generations, but also of the limitations placed by such a consensus upon those who produced it throughout the rest of their lives. Nonetheless, it seems to be the former type of limitations that is uppermost in the minds of the dialecticians as they debate the nineteenth through the twenty-first issues.

The nineteenth issue assumes, in Āmidī’s presentation, the form of the following question:⁴⁷ if the people of a particular age are divided between two opinions with respect to an issue that has arisen before them, may those who come after them introduce a third opinion? In other words, when the people

of a particular age are divided between two opinions, is this tantamount to an Ijmā'ic consensus to the effect that these two opinions alone will be acceptable in the future? As the discussion proceeds, we discover that the dialecticians are concerned not only with divisions of the community into two opinions—this is singled out only for purposes of discussion—but also with divisions of the community into three or more opinions; for we are presented, toward the end of the discussion, with the case of the division of the Companions into six opinions and the introduction of a seventh opinion by a second-generation Muslim.

Rather than declaring his unqualified support for the majority position, which is that people of a later generation may introduce a third opinion, Āmidī prefers to insert a proviso: the people of the later generation may introduce a third opinion provided it does not nullify something that the two earlier opinions have in common; otherwise, they may not. Āmidī gives an example of a third opinion that nullifies two earlier ones and of one that does not. If some of the people of a particular generation were to consider the intention of the worshipper to be essential to all acts of ritual purification while the others considered it essential only to some acts of ritual purification but not to others, then it would not be permissible for people in a later generation to introduce the opinion that the intention of the worshipper is not essential to *any* such act, for the two earlier opinions are in agreement on the point that the intention of the worshipper is essential at least to *some* acts of ritual purification, even if they disagree as to whether it is essential to all such acts, and the later opinion nullifies this agreement. On the other hand, if some in the earlier generation were to hold that the intention of the worshipper is not essential to any act of ritual purification and the others considered it to be essential to all such acts, then it would be permissible for people in the later generation to consider the intention essential to some such acts but not to others, for this opinion agrees with each of the two earlier opinions in part of what it asserts and disagrees with each in the other part of what it asserts. Thus there has not been an actual nullification of anything agreed upon in the earlier generation.

In defending his position, Āmidī must face the criticisms of those who insist that the later generation *may not* introduce a third opinion under any circumstances as well as the criticisms of those who insist, to the contrary, that the later generation *may* introduce a third opinion under any circumstances. The criticisms of the first group involve two different approaches. One focuses upon Āmidī's second example, contending that the third opinion in this example *does* nullify something that the earlier generation had agreed upon. This approach seeks to establish that the introduction of a third

opinion *always* entails a nullification of something agreed upon in the earlier generation. The argument it employs consists of two parts. The first part contends that when some in the earlier generation hold that the intention of the worshipper is essential to all acts of ritual purification and others hold that it is not essential to any acts of ritual purification the two groups are agreeing that the acts of ritual purification must be treated as a single *indivisible* category—that they may not be divided into acts to which intention is essential and acts to which it is not.

The second part of the argument contends that whenever the community is divided between two opinions the two opposing groups are in effect agreeing that individuals may thereafter hold either of the two opinions but not a third opinion. This is perhaps the crux of the case against the introduction of a third opinion. We must appreciate that what is envisioned in this argument is a division of the *entire* community between two opinions, a division that arises out of deliberations carried on by *all* mujtahids living at a given moment in time. This community-wide division, the argument says in effect, is categorically different from a purely local division. Both entail what may be called an agreement to disagree. But when the agreement to disagree occurs at a community-wide level, it absolutizes the particular disagreement upon which agreement is reached, namely, the disagreement involving two opinions. This disagreement must therefore be a right disagreement, since the community, being immune in its collective deliberations against error, could never agree upon any disagreement that was not right, all other disagreements being therefore by implication unacceptable.

Āmidī responds to the first part of the argument by denying that the two opinions really entail an agreement to the effect that acts of ritual purification must be treated as an indivisible category. He seems to rely here upon his sense, as a dialectician, of what the attitude of mujtahids (who are, of course, master dialecticians) would be in a situation like that described in his second example. He is sure that each of the two parties of mujtahids would regard its opinion as entirely distinct from the opinion of the other party and would therefore tolerate any opinion that opposed it, whether that of the opposing party or some other opinion. The two parties are not, in other words, sharing an opinion to the effect that the acts of ritual purification must be treated as an indivisible category, for this shared opinion would have to be regarded as distinct from each of the two opinions. Rather, each party is in *total* disagreement with the other party such that each is, following the customary practice among mujtahids, willing to countenance any number of opposing opinions.

Āmidī's response to the second part of the opponent's argument again appeals to the principles of dialectic followed by mujtahids. When mujtahids

are divided between two mutually exclusive opinions, they are not agreeing upon anything *of substance*, and the immunity against error spoken of by the Prophet simply does not enter in. As far as the so-called implied agreement to limit the field of discussion thereafter to the two opinions is concerned, no such agreement is implied in the dialectic carried on by mujtahids; to the contrary, there is agreement that so long as there is not a consensus on a matter of substance mujtahids and groups of mujtahids may oppose each other as freely as they wish.

We can well appreciate the danger to the dialectical process that Āmidī must have sensed in his opponents' position. If a division of the community between two opinions limited future dialectic to those two opinions, then division of the community between three *or more* opinions would limit future dialectic to those three or more opinions. Division between three or more—let us say, twelve—opinions is, of course, somewhat less limiting than division between two opinions, but this is not the point. The point is that whenever the *entire* community—or entire number of its mujtahids—living at any given moment is engaged in *ijtihād* over a particular matter, whatever opinions emerge—whether they be two or two hundred—will represent the limits of dialectic for all time. If one assumes that the Muslims of the first few generations—especially the Companions but also those who came after them—covered in their discussions all issues known to them and that they were all involved in the discussions, then one ends up with very little left over for later generations to concern themselves with as dialecticians—only a recital of well-known opinions and an endless rehashing of arguments for the purpose of selecting what appears to be the most cogently argued position.

The second main approach to the criticism of Āmidī's position that is taken by those who maintain that people of the later generation may not under any circumstances introduce a third opinion proceeds on the assumption that Āmidī's second example is correct as it stands—the third opinion in that example does not indeed nullify anything that the earlier generation has agreed upon. It argues that the introduction of a third opinion is impermissible even when it does not contradict anything previously agreed upon. Āmidī's proviso is therefore without validity.

The argument again consists of two parts, with the first part focusing on Āmidī's second example and the second part turning to a more general consideration. In Āmidī's second example, while the third opinion does not actually nullify anything that the previous two opinions have in common, it does, in affirming that intention is essential to some acts of ritual purification but not to others, imply that *both* of the two earlier opinions are partly mistaken; since the advocates of these two opinions represent the *whole community*,

the third opinion introduced later is implying that the whole community has agreed upon an error. The second part of the argument contends that the third opinion would not emerge among mujtahids unless it was based on some sort of indicator. But this would mean that the earlier generation had overlooked that indicator and that the community of that generation, in dividing itself between two opinions that had not taken all relevant indicators into consideration, had agreed upon error.

To the first part of the argument Āmidī's reply is that, while the third opinion may imply that both of the earlier opinions contain a measure of error, those holding the third opinion would never be *dogmatically asserting* that both of the earlier opinions contain a measure of error; for it is the practice among mujtahids never to claim finality for any opinion. So long as an opinion is embraced *as an opinion*, the one embracing it may never dogmatically assert that contrary opinions are erroneous. This mutual respect among the mujtahids is the basis of their disputation. Āmidī repeats the same point in his reply to the second part of the argument of his opponents, except that he now focuses on the mujtahids of the earlier generation: as good dialecticians, neither of the two parties of mujtahids would ever claim finality for its opinion; therefore, if an indicator had been overlooked, this would not signal an agreement of the community on error, since neither of the two opinions is advanced with a dogmatic claim to have the truth.

Finally, Āmidī must deal with the arguments of those who maintain that the people of the later generation may introduce a third opinion even when it nullifies something the earlier generation agreed upon. They, too, regard Āmidī's proviso as invalid, but for different reasons. In the above discussion, the proviso was viewed as a hindrance to the view that the people of the later generation may not introduce a third opinion under any circumstances; in the present context it is viewed as a hindrance to the view that the people of the later generation have unrestricted freedom to introduce third opinions as they please. Here Āmidī's opponents appeal to something that has up to this point been prominent in Āmidī's own argumentation: the practice of mujtahids. It is customary among mujtahids, they argue, to allow unrestricted freedom to disagree with one another's opinions; by disallowing disagreement on the part of mujtahids of a later generation with something previously agreed upon, one is placing a restriction on this freedom. Āmidī has dealt with this argument before, in advancing the case for the authority of the Ijmāʿ, and has no difficulty in disposing of it: the very point of the principle of Ijmāʿic authority is that when there is agreement upon a matter of substance the freedom of mujtahids is thereafter restricted by that agreement. But, say members of the opposition, we have the case of Ibn Masrūq: although the

Companions of the Prophet interpreted the phrase “You are forbidden for me” in six different ways, Ibn Masrūq, a second-generation Muslim, was not deterred by the thought that he might contradict something that those six interpretations had in common but proceeded to advance a seventh interpretation. Responds Āmidī: Ibn Masrūq’s interpretation did not in fact contradict anything that the six previous interpretations had in common.

Before leaving aside the nineteenth issue, a point of considerable importance should be noted. It is tempting to conclude from Āmidī’s discussion that the central concern of the dialecticians who debated this issue was not with a hypothetical division of the community between two opinions but rather with the very real division of the Sunnī world into four different “schools” of legal doctrine—Hanafī, Mālikī, Shāfi‘ī, and Hanbalī. The Arabic term for “school” (*madhhab*, literally, “way”), after all, can also be applied to the doctrine or opinion espoused by an individual and was customarily associated with the name of a great master (*madhhab abū hanīfa*, etc.). Thus we may wonder if, in stating his own position, Āmidī is not in effect telling us that whatever the four “schools” share in the way of common doctrine represents the Ijmā‘ of the community and that present-day Muslims (meaning contemporaries of Āmidī) may introduce further opinions only on condition that they do not nullify or contradict that common doctrine.

In fact, Āmidī has no such thing in mind; nor could any of his fellow-dialecticians have had any such thing in mind. While by their time the number of “schools” may well have dwindled to four, both Āmidī and his fellows were perfectly aware of the fact that the number of schools had been much greater earlier in the history of Islam and that any common doctrine that could be considered as representing the Ijmā‘ of the community would have had to emerge at an earlier time when other schools existed alongside the four that ultimately survived. For the doctrine of the four schools had for the most part emerged long before Āmidī’s day, at a time when the four schools did not have the field to themselves. This is not to say that nothing within the shared doctrine of the four schools is representative of the Ijmā‘ of the community. My contention is rather that anything within that doctrine that is representative of the Ijmā‘ is not to be so regarded simply by virtue of the fact that it is shared by the four schools. The job of determining what within the shared doctrine is representative of the Ijmā‘ and what is not is, as I have pointed out, left for the individual mujtahid to undertake: it belongs to the realm of *ijtihād*. Unquestioning adherence to the Ijmā‘ is, let us remember, a duty for mujtahids, who determine to the best of their ability through *ijtihād* when an Ijmā‘ic consensus exists. Unquestioning adherence to the four schools is, on the contrary, a duty for commoners, frequently called (but not by Āmidī)

taqlīd; and it is to be so regarded whether the adherence is to the distinctive doctrine of one school or to doctrine shared by all four. As is well known, one of the marks of a mujtahid who claims unrestricted competence (a modern example would be the eighteenth-century Yemeni scholar Muhammad ibn ʿAlī al-Shawkānī) is disavowal of allegiance to any of the four schools, including unquestioning adherence to their common doctrine.

In turning to the discussion of the twentieth issue,⁴⁸ we find our attention drawn to another aspect of the subject of the limitations that a particular generation may place upon the deliberations of future mujtahids. Here the question is whether people of a later generation may support an Ijmāʿic consensus of an earlier generation with indicators that were neither used by the earlier generation nor expressly mentioned as an acceptable alternative to the indicators that were used nor expressly rejected by the earlier generation. The question presupposes the majoritarian conviction that every Ijmāʿic consensus must be based on some sort of indicator; it also seems to presuppose that an Ijmāʿic consensus typically emerges out of *ijtihād* involving the use of inconclusive indicators. What is at issue here is whether the infallibility of an Ijmāʿic consensus extends beyond substantive content to the use of supporting indicators. Is an infallible consensus necessarily a consensus that was originally supported by *all* relevant indicators such that no other indicator may thereafter be used in support of it? Is there an implied Ijmāʿic consensus on indicators that transcends the perception of the relevance of indicators that any individual mujtahid may have thereafter? We should bear in mind that an Ijmāʿic consensus is a concurrence of opinion among mujtahids who separately may have taken different indicators into account. The issue here under consideration is therefore somewhat similar to the previous one in that it is concerned with division of the community between different viewpoints; it differs from the previous issue, however, in that it is concerned with viewpoints relating to the support of substantive opinions rather than with substantive opinions as such.

The majority of jurists, says Āmidī, allow the introduction of a further indicator by a later generation. He accepts this majority view with a proviso: the later generation may introduce a further indicator provided this does not imply a criticism of the earlier generation for basing its consensus upon inadequate indicators. This proviso suggests some sensitivity to the point of view of the minority who disallowed the introduction of further indicators. The problem they had with this is precisely that it seemed to imply that the consensus was not adequately supported. The best safeguard against such undermining of any Ijmāʿic consensus therefore seemed to be inclusion in the consensus itself of an infallible and exhaustive eliciting of all relevant

indicators. But there could be drawbacks to this way of thinking. It came uncomfortably close to suggesting that the infallibility of an Ijmā'ic consensus was dependent on the strength of the supporting indicators rather than upon the sheer agreement of the participants. The principle of Ijmā'ic authority as understood by the majority of jurists affirmed, after all, that an Ijmā'ic consensus accorded finality to what had been, on the strength of the indicators alone, tentative. By prophetic declaration, the sheer agreement of the community added something beyond what the indicators could contribute on their own. Once one demanded a correlation between infallible consensus and strong indicators, one was moving in the direction of rejecting altogether the *ijtihād*-induced consensus in favor of a consensus based exclusively on conclusive indicators, which in the minds of many was scarcely, if at all, an authoritative indicator of the divine law in its own right.

We seem here to be on terrain similar to that encountered in the discussion of the seventeenth issue (whether an Ijmā'ic consensus may emerge without consideration of an indicator). The majority insisted upon some sort of infrastructure of indicators for every Ijmā'ic consensus. But, on the other hand, one could err on the side of too much stress upon the strength of indicators. To insist that the producers of an Ijmā'ic consensus must necessarily have taken into account every relevant indicator, that they could not possibly have overlooked a single relevant indicator, was to undermine the importance of unanimous agreement *qua* unanimous agreement as the decisive factor in the emergence of an error-free consensus. On the other hand, Āmidī does not wish to let the introduction of unnoticed indicators by people of a later generation signal a faulty use of indicators, or a use of invalid indicators, on the part of the consensus-makers. He is here faithful to the majority view that an authoritative Ijmā'ic consensus must originally be supported by some properly utilized indicator or indicators (*contra* the view that such a consensus may arise apart from indicators through direct divine succor), but that it need not be supported by all relevant indicators, or by indicators that are in themselves so conclusive as to leave no room for doubt. Where indicators have not been noticed, one must allow for the possibility that they will be discovered by mujtahids of some later generation, not because the mujtahids are in deliberate search of additional support for a consensus that they perceive to be inadequately supported, but simply because the mujtahids, being continually busy with the study of the Qur'ān and the Sunna, happen to come across the hitherto unnoticed indicators.

We have seen that, according to Āmidī, when the community is divided between two (or more) opinions people of a later generation are free to introduce an additional opinion so long as it does not contradict something that

the earlier opinions have in common. But Āmidī has yet to consider the question of whether the people of the later generation are free to form an Ijmāʿic consensus in favor of one of the two (or more) earlier opinions. This question constitutes the twenty-first Ijmāʿ-^crelated issue. Āmidī's opinion is that the people of the later generation may not form a consensus in favor of one of the earlier opinions, since this would entail a contradiction between an earlier and a later Ijmāʿic consensus. He reasons that the division of the earlier generation between two opinions implies a consensus to the effect that both opinions are permissible; the later consensus, which in effect declares one of the two opinions forbidden, contradicts this.

But is it not possible that the earlier generation agreed that the two opinions were both permissible *so long as* no Ijmāʿic consensus subsequently emerged in favor of one of the two opinions? Āmidī replies that if we are going to take such a possibility into account we must do so with respect to every Ijmāʿic consensus that we know of: that is to say, we must conjecture that the consensus *may* have entailed an understanding that it would remain in effect until some future consensus emerged that contradicted it. However, to allow this is to make havoc of the principle of Ijmāʿic authority. But are there not clear cases of division of the Companions of the Prophet between several different opinions followed by an Ijmāʿic consensus of the second-generation Muslims upon one of those opinions? Is it not the case, for example, that the second-generation Muslims agreed that female slaves who had born sons by their masters were not to be sold after the Companions had been divided on this question, some holding that the slave could be sold, some that she could not? Āmidī is in fact constrained to consider a number of such precedents that his opponents use to advance their point of view, but he insists in all cases that the second generation did not in fact reach a true consensus. For example, on the issue of the sale of son-bearing female slaves, he contends that ʿAlī was known to have favored permission of sale and that since his opinion was well known to the second-generation Muslims they could not possibly have formed a consensus contradicting it. Furthermore, the Shīʿīs have since then consistently adhered to ʿAlī's teaching, and even Shāfiʿī is said at one point to have accepted ʿAlī's view. Thus what is purported to have been a consensus among the second-generation Muslims in favor of prohibition of the sale of son-bearing female slaves could not have been a true Ijmāʿic consensus but only an agreement within certain circles.

The position that Āmidī takes on the issue just considered carries awesome implications. If a question in law comes to the attention of all the mujtahids living at a particular moment in time and they all deliberate upon it but do not (after having reached the point where they feel ready to express

an opinion) come to an immediate consensus, they forfeit forever all chance that an authoritative Ijmā'ic consensus will arise on that question. For as soon as the mujtahids of a particular age become divided between different opinions, they cause the community to be forever locked into those opinions plus whatever additional opinions others are able to introduce without contradicting something common to the original opinions. This requires that the community continually preserve the memory of the original opinions along with the added opinions so that individuals will not wrongfully aspire to create an Ijmā'ic consensus around any one of the inherited opinions. But, of course, should individuals wrongfully aspire to reach such a consensus, they would be bound by virtue of prophetic declaration not to succeed, since the Prophet has assured us that his community will never come to an erroneous agreement.

There are implications here again for our thinking about the four surviving Sunnī schools. The common doctrine of these schools cannot be regarded as necessarily representing a true Ijmā'ic consensus, since that common doctrine clearly represents for the most part but one body of opinion within the larger spectrum of opinions that existed in earlier times; consequently, even though it may constitute an actual consensus in a later period, it can never acquire an Ijmā'ic status but must always remain merely a body of opinion, to be accepted unquestioningly only by those who dare not claim the ability to engage in unrestricted *ijtihād*.

The remaining Ijmā'-related issues receive very brief treatment from Āmidī.⁴⁹ One wonders if this brevity is indicative of a general paucity of discussion of these issues among the Muslim dialecticians. The issues themselves are not necessarily without intrinsic interest. For example, one of the issues (the twenty-second) is whether it is possible for the Muslim community as a whole ever to be ignorant of an indicator of the divine law that is not contradicted by some other indicator. Stated otherwise, the issue is whether the protection of the community against error includes protection against ignorance of any such indicator. The indicator that *is* contradicted by another indicator does not raise a problem, since conflict between indicators obstructs the understanding of God's law. (We shall consider the subject of conflict between indicators later.⁵⁰) When an indicator is not in conflict with another indicator, it is a definite means whereby an understanding of the divine law, however fallible, may be attained. Therefore, to say that the community as a whole is ignorant of such an indicator is to say that the community as a whole lacks a means of understanding the divine law. Does this lack constitute or entail an "error" such that the community is protected against it?

Āmidī's position is that it does not so long as the behavior of the community conforms to that part of the divine law that the indicator points to. We seem here to be stepping back into the domain of the seventh issue, and that is perhaps why Āmidī's present discussion is so brief; for to say that the community can comply with the divine law in its behavior without the aid of an indicator is to suggest that an infallible consensus (here expressed in behavior) may arise through direct divine assistance. If ignorance of the indicator would result in behavior that was inconsistent with the law adumbrated by the indicator (as those who rejected the idea of an Ijmāʿic consensus apart from consideration of indicators insisted must always be the case), then that ignorance would indeed come under the heading of error and the community would be protected against it.

Of somewhat less interest is the issue of whether it is possible for the community as a whole to apostatize. In other words, does the protection of the community's consensus against error include protection against collective apostasy? At first glance, the obvious answer would seem to be yes. Apostasy is certainly a form of error. But there is a technical problem with the idea of protection against apostasy. If the community was ever to agree to forsake Islam, would it not cease by virtue of that very agreement to be a Muslim community and therefore to be protected against error? Āmidī maintains that the protection against error would still apply. If all Muslims were to abandon Islam, we would, he argues, regard the statement that "the Muslims agreed [we might rather here say concurred] upon the abandonment of Islam" as true. The Prophet's declaration indicates that this can never be a true statement. No doubt most Muslim dialecticians regarded community-wide apostasy as so far-fetched—even if possible within the terms of the prophetic declarations—that discussion of the matter seemed hardly worth undertaking. The kind of error they were primarily concerned with was that which belonged under the heading of "innovation" (*bidʿa*, which may also be called "heresy", insofar as it relates to religious dogma), a far more feasible thing.

If, then, an Ijmāʿic consensus could never place the community outside the pale of Islam, could repudiation of an Ijmāʿic consensus ever place an individual outside the pale of Islam (the twenty-seventh issue)? In other words, can rejection of an Ijmāʿic consensus by someone of a later generation ever constitute unbelief (*kufṛ*)? Āmidī notes that all who debated this issue agreed that rejection of a probable Ijmāʿic consensus cannot constitute unbelief. The freedom of debate so highly prized by the Muslim dialecticians required that so long as an Ijmāʿic consensus was probable rather than certain each individual was entitled, if he felt so constrained, to hold the opinion that the consensus had not occurred. As for the consensus that was entirely beyond doubt,

this was another matter: some held that repudiation of it was tantamount to unbelief; others disagreed. Āmidī takes the view that if the consensus pertains to the essentials of the Islamic religion, then repudiation of it constitutes unbelief; otherwise, it does not. He gives two examples of an Ijmā'ic consensus that pertains to the essentials of Islam: the consensus upon the five basic religious duties (the so-called pillars of Islam) and the consensus to the effect that affirmation of monotheism and of God's sending of prophets is obligatory. It may be recalled here that in his theological writings Āmidī establishes the duty of affirming monotheism and God's sending of prophets without any reference whatsoever to the Ijmā'. However, while the Ijmā' is not, and cannot be, the ultimate indicator of this particular duty, it is a fact that all Muslims do accept it and that anyone who does not is repudiating a unanimous Muslim consensus. Such unbelief, though not reducible merely to repudiation of an Ijmā'ic consensus, clearly entails such repudiation.

Finally, in his epilogue (*al-khātima*) to the section of the *Ihkām* that deals with Ijmā'-related issues,⁵¹ Āmidī takes up briefly an issue that seems to have importance primarily for political theory: whether the Ijmā' carries authority with respect to worldly affairs (*umūr al-dunya*) as opposed to "religious" matters (*umūr al-dīn*). Controversy over this issue, we learn, was first stirred up by the Mu'tazili jurist and theologian 'Abd al-Jabbār, who in some passages in his writings denied authority to the Ijmā' in the realm of worldly affairs while in other passages he affirmed that authority. From Āmidī's examples of "worldly affairs"—he mentions the conduct of wars, the organization of armies, and the administration of the affairs of "subjects" (*ra'īya*)—one readily gets the impression that this phrase embraces the administrative tasks carried on by the ruling class. If this is the case, then the issue seems to be whether rulers must bow to an Ijmā'ic consensus pertaining to the conduct of the affairs of government. Whatever the precise meaning of "worldly affairs" may be, Āmidī ends the discussion of this issue—and the section of the *Ihkām* on the Ijmā'—true to form: he declares his adherence to the plain and unqualified sense of the Prophet's sayings about the immunity of the community's consensus against error. The community, he insists, enjoys this immunity in *whatever* it agrees upon, whether within the realm of worldly affairs or within the realm of religious affairs.

Having completed our survey of Āmidī's discussions of the Ijmā'-related issues, we may now see what can be drawn from those discussions in the way of general conclusions. Clearly, by Āmidī's time the principle of Ijmā'ic authority was a hallmark of Sunnī thought. Except for Ahmad ibn Hanbal and the Mu'tazili theologian Nazzām, no Sunnī personage is mentioned anywhere in Āmidī's discussions as having opposed the principle. Nazzām's

opposition would not in any case have mattered to Sunnī thinkers in Āmidī's time, as Nazzām had a general reputation for heterodox leanings. And so many varied and contradictory statements were attributed in different traditions to Ibn Hanbal that one cannot reasonably attribute an anti-Ijmāʿ bias to him without giving way to tendentiousness; the most one can conclude is that there *may* have been an anti-Ijmāʿ bias among some *ḥadīth* specialists, but this is purely speculative. The only opponents of Ijmāʿic authority other than the two just mentioned who are actually named in Āmidī's account are the Shīʿīs and the Khārijīs, the two great non-Sunnī camps, who reject the principle on the grounds that the authority of the Ijmāʿ cannot be substantiated. From this one gathers that the principle of Ijmāʿic authority was viewed as a distinctly Sunnī notion. Any Sunnī opposition to it that may have existed at an earlier time remains essentially anonymous.

Shīʿī opposition to this principle does not entail nonrecognition of the existence of an Ijmāʿic consensus among Muslims; rather, it entails nonrecognition of the authority of the Ijmāʿ as independent of the authority of the Imām. Āmidī later in the *Ihkām* gives as an example of an Ijmāʿic consensus the consensus of the Companions of the Prophet on the punishment for drinking wine, namely, eighty lashes. This consensus takes the form of concurrence upon a declaration in favor of the eighty-lash penalty on the part of ʿAlī ibn Abī Tālib. In the Sunnī view, the judgment to the effect that the wine-drinker is to receive eighty lashes becomes authoritative, not by virtue of ʿAlī's declaration, but by virtue of the concurrence of all the Companions; the Ijmāʿ transforms an opinion put forward by ʿAlī, acting as one among many mujtahids, into an authoritative, immutable expression of the divine law. The Shīʿīs reverse this arrangement. Far from constituting a mere opinion, ʿAlī's declaration is in and of itself an authoritative, immutable expression of the divine law and needs no consensus to transform it into such, for ʿAlī as the true Imām, not the community, is the proper bearer of the attribute of immunity from error. Any authority that the consensus acquires derives from the authority of the Imām, not vice versa.⁵² There can therefore be no authoritative consensus in the absence of the Imām. Since the disappearance of the Twelfth Imām, the community is, in the Shīʿī view, left in the custody of its mujtahids who function on behalf of the Imām but not as a substitute for him in the strict sense of that term.

The authority that was at issue in inter-Muslim disputation over the authority of the Ijmāʿ was of the type I have elsewhere in this volume called absolute authority.⁵³ The distinctive characteristic of absolute authority is that it requires conformity *on the part of mujtahids* in subsequent generations. This absolute authority stands in contrast to the relative authority that

individual mujtahids bear *in relation to their followers* (in common parlance, their *muqallidūn*, but in the terminology preferred by Āmidī, their *mustaftūn*) but not in relation to each other. It is important to understand, however, that the absolute authority of a particular Ijmā'ic consensus is not necessarily universally effective in subsequent generations; in fact, it is more often *not* universally effective in subsequent generations. This is because the very existence of the consensus is something on which the mujtahids may not agree; and where there is agreement on the existence of the consensus there will in all probability not be agreement on the legal import of the relevant Ijmā'ic text, the saying or narrative in which the consensus finds expression.

Thus the absolute character of the authority of the Ijmā' is no guarantee that a particular Ijmā'ic consensus will enjoy *universal* authority. The absoluteness of Ijmā'ic authority consists in the fact that when an individual mujtahid arrives at a conviction that an Ijmā'ic consensus occurred at some point in the past he has no option but to submit to the authority of that consensus, to treat it as an indicator of the law on a par with the Qur'anic and Sunnaic indicators. His posture toward the Ijmā'ic consensus that he believes to be a reality is entirely different from his posture toward the opinions of individual past and present mujtahids. The latter he does *not* treat as an indicator of the law on a par with Qur'anic and Sunnaic indicators, however much the opinions may stimulate or contribute to his thinking. He is not, after all, a follower but a master. For him to submit to the authority of other mujtahids would be a dereliction of duty. But he may be the only mujtahid who holds the opinion that the particular Ijmā'ic consensus under consideration actually existed. His isolation in this respect is of no significance: *he* must submit to the authority of the particular consensus while all his fellow mujtahids, who do not share his opinion that the consensus actually occurred, do not. On the other hand, many of his fellow mujtahids may agree with him on the existence of the consensus but disagree on the meaning of the text in which the consensus is embodied. Perhaps only he finds a genuine rule of law in the text, while the others see in it only moral exhortation but not law. In this case, again, his isolation is of no consequence: he must treat the rule of law as a rule of law, while his fellow-mujtahids do not.

The point is that, if the absolute authority of a particular Ijmā'ic consensus was effective only if all mujtahids agreed upon its existence and upon the meaning of the relevant Ijmā'ic text, it could not be effective at all; for its effectiveness would be dependent upon another Ijmā'ic consensus, which would create an impossible situation. The absolute authority of any Ijmā'ic consensus is thus seldom if ever universally effective. The Ijmā', by virtue of its absolute authority, takes its place alongside the Qur'an and Sunna as an

object of individual scholarly deliberation. Absolute authority operates hand in hand with the relative authority mujtahids have over their followers. Just as a mujtahid ponders Qurʾānic and Sunnaic texts and hands over his conclusions to his followers, so he does the same with the Ijmāʿic texts. The absolute authority of the Ijmāʿ thus becomes effective for commoners through the mediation of the relative authority of the mujtahid.

There are, however, differences among Qurʾānic, Sunnaic, and Ijmāʿic texts. In the case of Qurʾānic texts, the mediation of the mujtahid is not all-pervasive: the Islamic tradition considers the authenticity of the Qurʾān to be secure against all doubt and the meaning of crucial parts of it to be clear to all and thus not subject to variation in interpretation. With the Sunnaic and Ijmāʿic texts the mediatory role of the mujtahid increases appreciably, although just how much is a matter of disagreement among the Muslim jurists. Presumably the mediatory involvement of the mujtahid is at its greatest in the case of Ijmāʿic texts, for the issue of the authenticity of a particular Ijmāʿic text (which is closely related to the issue of the occurrence of the consensus embodied in it) is fraught with much greater problems than is the case with Sunnaic texts, and the task of determining the legal import of an Ijmāʿic text is also much greater, due to the difficulties involved in finding relevant contextual means of resolving ambiguities.

From Āmidī's discussions it is clear that within Sunnī circles there was widespread resistance to the reduction of the status of the Ijmāʿ to that of probable indicator (*dalīl zannī*) of divine law. In fact, the most serious division among Sunnīs was over the issue of whether the status of the Ijmāʿ may or should be thus reduced. This is an issue that does not even receive separate treatment from Āmidī, though it lurks in the background of the discussion of many of the twenty-seven issues that do receive separate treatment. Those who wished not to allow the Ijmāʿ to become a merely probable indicator belonged, I think, to the camp of the rigorists, those who wished to maximize certainty and uniformity in the law so as not to allow the law to become a bone of contention between different schools of interpretation. This rigorist posture manifests itself on a wide range of issues, as we shall see in forthcoming chapters. Those jurists who adopted this posture were quite naturally eager to provide the authority of the Ijmāʿ with an "unshakable basis" (to use G. Hourani's phrase⁵⁴), one that would make its absolute authority sure and not merely probable. Some, seeing a degree of inconclusiveness in the Qurʾānic and Sunnaic texts that were widely used to support the authority of the Ijmāʿ, attempted to develop a rational argument for this authority but became embroiled in problems arising from the developing distinction between the Ijmāʿ and *tawātur* (widespread transmission). Others

apparently took the approach of contending for the conclusiveness of the relevant Qur'ānic and Sunnaic texts. For both groups the issue of the authority of the Ijmā' was *mas'ala qat'iya*, an issue that admitted *only* of a sure and absolutely defensible resolution.

Āmidī seems, when all is said and done, to belong to the camp of those who saw the Ijmā' as functioning as a probable indicator of the law, one that could yield nothing more than opinion. True, he seems, on the issue of the authority of the Ijmā', to try to straddle the fence between the two camps by affirming the *near* conclusiveness of the supporting Qur'ānic and Sunnaic texts, especially the latter. But near conclusiveness is not, from a technical point of view, the same thing as conclusiveness, and Āmidī finds himself constrained in the end to let the absolute authority of the Ijmā' rest upon probability. This being the case, he has no choice but to regard the Ijmā' as actually operating as a probable indicator dependent upon the fallible deliberations of the individual mujtahid.

Were one to discover absolutely conclusive textual support for the authority of the Ijmā', one could then draw a distinction between instances where a particular Ijmā'ic consensus was known and understood with complete certainty and could therefore actually function as a sure (as opposed to probable, or opinion-engendering) indicator and instances where this was not the case. Adherents of the party that strove to maintain the highest possible status for the Ijmā' did not necessarily rule out instances of the latter type. Their concern was, rather, to advance the case for instances of the former type, for it was these that in their view played the crucial role in the overall functioning of the Ijmā'. When we consider that the obligatory (as opposed to merely recommended) status of the most basic acts of worship in Islam was believed by many to rest upon an Ijmā'ic foundation, we can easily appreciate why the zeal for an exalted and assuredly authoritative consensus was so great among some Sunnī thinkers. We must bear in mind further that, until the *tawātur* principle was developed as a principle distinct from the Ijmā'ic principle, the Ijmā' bore, for many Muslims, the burden of guaranteeing the transmission of the Qur'ān and the Sunna—all the more reason to give it as exalted a position as possible.

But even if one acknowledged the conclusiveness of the textual evidence for the absolute authority of the Ijmā', the task of demonstrating how that absolute authority could become operative was still fraught with extremely intractable problems, no doubt a major reason why many Muslim jurists—perhaps the majority—settled for an Ijmā' that functioned only, or at least primarily, as a probable indicator. To begin with, who must participate in the making of an Ijmā'ic consensus: the entire community or only

mujtahids (fifth issue)? Āmidī says clearly that this is an issue that must be considered amenable to a probable, opinion-based (as opposed to a sure) resolution: in other words, each mujtahid must work out an answer for himself, and mujtahids must be allowed to differ. If this is the case, then all else is open to question and amenable only to probable resolution, for at the very outset of our attempt to make Ijmāʿic authority operable we are faced with the problem of not knowing for certain whom we are to include among the Ijmāʿ-makers. Let us say that we depart from Āmidī's own example and embrace as the best opinion the view that the mujtahids alone are the Ijmāʿ-makers, the majority view. But who are the mujtahids? Here we are faced with the problem that there is no identifiable official agency that confers upon individuals the status of mujtahid so that we may look at a credential in order to determine who is a mujtahid. Mujtahids are not, so to speak, card-bearing members of some sort of organized association whose membership lists are kept somewhere on file.

We shall consider at great length later the question of who is a mujtahid.⁵⁵ Here we may note simply that a mujtahid is anyone who gives an appearance of being truthful in making a claim to be a mujtahid (see the discussion of the sixth issue above). The identification of mujtahids must, in other words, be based upon claims that individuals make about themselves, which must be accepted upon a presumption of truthfulness. The presumption of truthfulness is based upon the individual's outward circumstances. If he is, for example, an illiterate peasant (to cite an extreme case), he does not enjoy this presumption; but if he is a member of the class who busy themselves with the study of the Islamic religious sciences, then the presumption must be made: unless we have some clearly demonstrable reason to deny his claim, we must accept it at face value as truthful and accordingly count him among the mujtahids. But how can we ever, on the basis of criteria such as this, identify *all* the mujtahids living throughout the vast reaches of the Islamic world at a given point in time? And, assuming that we could, how could we ever know their views concerning the divine law? If they all were to show up at a gathering and cast a vote—or send written communications to some agency—we would perhaps have a slim chance of determining whether an Ijmāʿic—that is to say, unanimous—consensus existed. In the absence of such mechanisms, we could never be sure whether every mujtahid on the face of the earth had responded to the call. We could, of course, test our results by checking to see whether the agreement of those mujtahids whom we were able to poll coincided with an opinion that had coexisted with other opinions in a previous age such that the mujtahids as a body were divided between it and the other opinions.

If we discovered such a coexistence, we would know that our agreement was still not a true Ijmā'ic consensus, since—as Āmidī has argued—an Ijmā'ic consensus cannot arise upon a matter on which a previous generation was divided (see the discussion of the twenty-first issue). But locating the previously held opinion and determining that it was one of several opinions on which the community as a whole was divided is itself a task of the greatest imaginable magnitude. If we resort to the principle that silence indicates consent and try to build a case for a tacit Ijmā'ic consensus out of our lack of awareness of objection on the part of any mujtahid on the face of the earth to opinions expressed by one or several of his fellows, we run into all the problems that are entailed in the interpretation of silence (see the discussion of the fourteenth issue). Furthermore, we face the issue of how much time must pass before we can draw a conclusion from this silence. Must we allow time for all the mujtahids believed to have been living at the time the opinions in question were first propounded to disappear from the scene? Here again are a host of problems that can only complicate our search for an Ijmā'ic consensus all the more.

These difficulties were an important reason why some Muslim jurists confined the authoritative Ijmā' to a specified generation, locale, or group (seventh and ninth through the twelfth issues), or settled for an Ijmā' of the majority (eighth issue). The most appealing of these options was the Ijmā' of a specific generation, that of the Companions. Here a kind of membership list with information about each member existed: the biographical (*tabaqāt*) works, especially that of Muhammad ibn Sa'd. It was by no means complete, but it was at least something to work with. Furthermore, the great mujtahids of the period during which legal doctrine developed into its classical form could be presumed to have more information about the Companions than that which survived to later periods. Whether one as a matter of principle confined the authoritative Ijmā' to the Companions or not, the Ijmā' of the Companions would necessarily have a preeminent importance. For if the Companions, by agreeing as a total group to disagree on many if not most of the questions that arose in their time, could establish forever a repertoire of opinions on which no future generation could form an Ijmā'ic consensus (see the discussion of the twenty-first issue above), then they were very much in a privileged position vis-à-vis other generations. If one was satisfied that the legal doctrine worked out by the great mujtahids of the first three or four generations of the Islamic era was the best formulation of the divine law the Muslim community could ever hope to have, then it mattered very little whether an Ijmā'ic consensus in a later generation was determinable or not.

Why, we may ask, is Āmidī—not to mention other like-minded thinkers—so bent on affirming the authority of an *Ijmāʿ*ic consensus of *any* generation of Muslims? I have suggested earlier that what most governs his thinking about the *Ijmāʿ* is his faithfulness to the plain, unqualified sense of the relevant sayings of the Prophet. He is mainly concerned, not with practicability, but with theoretical consistency. He is, after all, a theologian whose working out of the science of theoretical jurisprudence is grounded, among other things, in theological postulates. The opinions he holds concerning the *Ijmāʿ* are therefore the opinions that his theology (together with his hermeneutic) requires him to hold. Given that God exists, that among his eternal attributes is his speech, and that his speech is embodied in the Qurʾān and the Sunna of the Prophet, Āmidī must be guided exclusively by that Qurʾān and that Sunna in working out his thoughts about the *Ijmāʿ*.

It is enormously significant, I think, that when Āmidī cites *Ijmāʿ*ic grounds for any position that he or any other jurisprudent holds on an issue in theoretical jurisprudence it is almost always a consensus of the Companions of the Prophet that he cites. Thus Āmidī himself provides the best evidence for the preeminence of the *Ijmāʿ* of the Companions, notwithstanding his insistence on the theoretical possibility of an *Ijmāʿ*ic consensus in any generation. This preeminence of the *Ijmāʿ* of the Companions gives preeminence to the Āthār as a textual repository of the *Ijmāʿ*: the Āthārīc texts become the *Ijmāʿ*ic texts par excellence.

It is also enormously significant that the instances of *Ijmāʿ*ic consensus of the Companions that Āmidī cites are always instances in which the existence of a consensus is inferred from a presumed silence of the many in the face of a saying or act of a single Companion or, at most, a few Companions. These instances, in other words, all fall under the heading of the tacit consensus (*al-ijmāʿ al-sukūti*). Āmidī's procedure is generally to cite a saying of a famous Companion and then follow it with the statement, "We know of no Companions who objected to this saying." This practice implies, I think, an acknowledgement that, for all the difficulties it posed and uncertainty it produced, the tacit consensus was the only type of *Ijmāʿ*ic consensus that Muslim jurists had reasonable hope of ascertaining and employing in their argumentation with one another.

THE TRANSMISSION OF TEXTS

The three categories of indicators of the divine law considered thus far—Qur’ān, Sunna, and Ijmā^c—all share a common characteristic: they all consist of, or are embedded within, texts and therefore come under the heading of transmitted, or textual, indicators. We may thus speak of three categories of texts: Qur’ānic, Sunnaic, and Ijmā^cic. But we are not dealing here with written, much less printed, texts, even though it is such texts that first come to our minds as moderns when the word is spoken. Written texts there certainly were in medieval Islam, and in great abundance. But the written text is not always what came first to the mind of the medieval Muslim when the Arabic term for text, *matn*, was spoken. Especially within the context of theoretical jurisprudence, what was likely to come first to his mind was a body of precisely fixed and, in principle, unalterable words that were *orally* transmitted from one generation to another. He could not separate the idea of a text from the idea of live transmission from person to person. Even written texts entailed live transmission, for each text was hand-copied by a scribe, either from another written copy or on the basis of dictation (unless the scribe was also the author). Every written text reflected the personality of the scribe—his choice of writing style, the idiosyncrasies of his particular script, his level of competence, and, above all, his mistakes. However, transmission by written texts was regarded as peripheral to the primary transmission process, which occurred by way of the spoken word. It is because texts were believed to consist primarily of orally transmitted material that indicators contained within texts were most commonly called *transmitted* indicators (*dalīl naqlī*) or *aurally received* indicators (*dalīl sam‘ī*), as we have previously noted,¹ although these terms are sometimes used of what I have called paratextual indicators, that is to say, analogies engendered by texts.

Because we think of texts as written or printed material, we also tend to regard a text as a relatively extended organized corpus. “Qur’ān” conjures in our minds the written corpus believed to have been compiled during the

caliphate of ʿUthmān. “Sunna” conjures up the great compilations of *hadīth* material such as those of Bukhārī and Muslim. The medieval Muslims, it is true, associated “Qurʾān” with the ʿUthmānic corpus and thus pictured it in their minds as precisely delimited and structured. They did not, however, form any such picture of the *hadīth* material, whether Sunnaic or Ijmāʿic/Āthāric. Rather, this material was to them a fluid body of discrete and separable items that could be arranged in a variety of ways but in themselves presupposed no particular arrangement. “Text” (*matn*) therefore meant to them a particular item of *hadīth*. In fact, while they did occasionally use the word *hadīth* in a generic way, they more often spoke rather of *hadīths*, using the Arabic plural *ahādīth*. Unlike the Qurʾān, this fluid body of *hadīths*—or, as I shall hereafter call them, *hadīth* narratives—had no perceptible limits.

While the ʿUthmānic compilation of the Qurʾānic text together with the seven most common systems of vocalization may be regarded as a canon of sorts, the great compilations of Sunnaic *hadīth* material are definitely not canons. Rather, they represent a purely individual attempt on the part of renowned compilers to gather together what was in their judgment the most reliable of the Sunnaic material known to them. Long after the compilations were made, bits and pieces of Sunnaic material that never found their way into the compilations continued to be transmitted orally and might find their way eventually into the writings of a jurist or theologian or even Sūfī theorist, whence they sometimes become known to us. As for Ijmāʿic material, no serious attempt at compilation of this material was ever made, for reasons suggested in the previous chapter. Thus while the Qurʾān was a fairly discrete entity with discernible boundaries, the body of *hadīth* narratives constituted an amorphous mass whose boundaries no one could hope to catch sight of, at least with any degree of clarity. We may describe the lines marking the limits of the Qurʾān as more or less clearly drawn and those marking the limits of the Sunna (which must necessarily exist in principle, since the Sunna is a finite entity) as fuzzy or blurred. The reasons for this will become clearer later on. As for the Ijmāʿ, the lines marking its limits are altogether undiscernible.

Amorphous as the body of Sunnaic *hadīth* material may be, we have become accustomed to thinking of it as a textual corpus; and, of course, we have no difficulty in thinking of the more discrete Qurʾānic “collection” (*jamʿ*) as such. But it is perhaps precisely because we associate these two types of texts with organized written compilations that we experience no difficulty. The Ijmāʿic *hadīth* material is quite another matter, and we perhaps experience some difficulty here, for it is not our custom to associate the concept of the Ijmāʿ with texts. For one thing, we have no compilations from which to form a mental image of such texts, comparable to the great compilations

of Sunnaic material. It is therefore especially important in the case of Ijmā'ic texts that we dissociate the idea of text from the organized compilation and try to look at these texts in the way that Muslims before the advent of the written Sunnaic compilations looked at texts representing the Sunna—that we see them, in other words, as an amorphous mass on which no precise limits could be placed and as transmitted orally before some (but not all) found their way into written literature.

In order to get a better understanding of the nature of the Ijmā'ic texts, we may consider the example of the consensus of the Companions to the effect that the punishment for drinking wine would be eighty lashes. This consensus was, we are told, occasioned by a statement of 'Alī calling for the eighty-lash penalty. Its existence is inferred from the fact that none of the other Companions objected to 'Alī's statement. The consensus was, in other words, a tacit consensus, and 'Alī's statement is the verbal expression of it, its text. Had other Companions made similar statements, those statements, too, would be taken into consideration. Such statements have in principle a fixed form, like the sayings of the Prophet; that is to say, they entail a fixed arrangement of words and are to be transmitted thereafter without any alteration. If any alteration enters in, this is due to the shortcomings or poor memories of the transmitters.

In their discussions of texts and the transmission of texts, the medieval Muslims gave special prominence to the Arabic term *khbar*, which I shall here translate as "report." We shall consider Āmidī's discussion of this term presently. Here I wish to explain how the concept of the report and of reporting (*ikhbār*) bears upon the transmission process. If we keep steadfastly in mind the oral, or live, character of texts in the Muslim understanding, we can appreciate why a text was, to the medieval Muslim, *a kind of report* and the transmission of a text *a kind of reporting*. A text, in this way of thinking, comes into being when someone reports an event he has witnessed and the report is then transmitted from person to person across space and time. The event reported will have some sort of special significance for a relatively large number of people—otherwise it will not be transmitted on a scale sufficient to warrant its being considered a text. Such an event may consist of a saying, act, or endorsement of an authoritative figure. When it consists of a saying, the words employed by the authoritative figure will become an important part of the text. The report will, if it is a proper report, reproduce those words with complete accuracy. Later generations will then ponder their meaning.

Typically, the Sunna will be embodied in a report of the form "The Prophet said such-and-such," or "The Prophet did such and such." This constitutes what may be called the quintessential report. Such a report must, as we

shall see, be based upon a direct witnessing of the saying or act of the Prophet in question. This direct witnessing will be incorporated into the report by expanding it into "I heard the Prophet say such-and-such," or "I saw the Prophet do such-and-such." There are, as we shall see, several possible variations of the expanded report. The expansion individualizes the report, making it the report of a certain person. The quintessential report "The Prophet said such-and-such [or did such-and-such]" is what the various individualized reports have in common. Although "quintessential report" and "expanded, or individualized, report" are my terms, not those of the medieval Muslims, they help us, I think, to understand what is involved in the reporting process. When a person reports on the basis of direct witnessing something the Prophet said (as in "I heard the Prophet say such-and-such"), he is doing two different but interdependent things: he is reporting *that he heard* the Prophet say such-and-such, and he is reporting, on the basis of his hearing, *that the Prophet said* such-and-such. Both his hearing and the Prophet's speaking are events that he is reporting. It is, however, the report of the Prophet's speaking that is the primary, or quintessential, report; and it is this that, it seems to me, the Muslim jurists generally have in mind when they speak of *al-khabar*. The expanded report adds to the quintessential report a report of the experience of hearing the Prophet's saying. What is reported, of course, is a particular person's hearing of the Prophet's saying. But this is not in itself what is of interest to the Muslim community, except as a way of ascertaining the empirical basis of the essential report. It is the quintessential report that is of primary interest to the community. What the reporters are most conscious of is their reporting to others what the Prophet said or did.

It is the quintessential report that may be said to be transmitted from reporter to reporter and to constitute a text (*matn*). Āmidī sometimes uses the phrase *rawā khabaran*, "he related a report."² The verb *rawā* refers to the transmission process, the noun *khabar* to what is transmitted. A more complete version is *rawā khabaran 'an fulān*, "he related a report from so-and-so," that is to say, on the basis of what he had heard from so-and-so. Āmidī also uses the verb *qara'a* in the same way: in *qara'a khabaran*, "he recited a report," *qara'a* represents (perhaps even more than *rawā*) the transmissional process and *khabar*, again, the thing transmitted, the quintessential report. One can also combine *akhbara*, "he reported," with *khabar* with a similar though perhaps not quite the same result: *akhbara khabaran*, "he reported a report." It is significant that, in Āmidī's usage, while the subject (agent) of both *rawā* and *akhbara* (the *rāwī* and the *mukhbir*) may be either an original witness or a subsequent transmitter, the subject of *qara'a* may only be a subsequent transmitter.

Since the quintessential report is a constant that does not vary from reporter to reporter, one can speak of it as a single entity; and if it meets certain conditions that will be mentioned presently, it can be described as a *mutawātir* report. Thus it is possible to speak of a large number of reporters as conveying to their listeners a great many different individualized reports but only one quintessential report.

When an individual hears a report of a witness to an event and passes it on to others, his individualized report takes the form "I heard so-and-so say that the Prophet said such-and-such." This is the form that the individualized report of all reporters who are not direct witnesses will take so long as the quintessential report is transmitted through space and time. Only the witness can say, "I heard the Prophet." All subsequent reporters must say, "I heard a reporter" (the original witness or a subsequent reporter). The central event reported remains the saying of the Prophet in question. The complementary event is now not the hearing of the Prophet's saying but the hearing of a report. In the case of a second-generation reporter, "I heard so-and-so say that the Prophet said such-and-such" presupposes an even longer version: "I heard so-and-so say that he heard the Prophet say such-and-such." In the case of, say, a fifth-generation reporter, the presupposed version becomes expanded into: "I heard A say that he heard B say that he heard C say that he heard D say that he heard the Prophet say such-and-such" (again, this is but a general form of which there are possible variations). I must emphasize that this is a *presupposed* version, not a version that will necessarily enter into the consciousness of the fifth-generation reporter. Whether or not it does enter into his consciousness depends on its importance in the determination of the truth of the report.

As we shall soon see, if the report is transmitted in a manner that entitles it to be considered a *mutawātir* report (which entails, among other things, transmission on a wide scale), its truth will be known apart from any knowledge of the "chain of transmitters" (*isnād*); it will be known from the report itself. We shall see presently just what this means. If it is not transmitted in this manner, the knowledge of its truth—or, to be more exact, the opinion that it is true—will be dependent upon the listing of the transmitters. The current transmitter in that case will have to assume the added burden of transmitting, along with the quintessential report and as part of his individualized, expanded report, the names of all the transmitters in the chain.

Just as the Sunna is embedded in reports, so is the *Ijmāʿ*. The consensus for the eighty-lash penalty for drinking wine mentioned above is embedded in a report of ʿAlī's saying. We cannot, of course, know from that saying alone that it is expressive of a consensus. Therefore, we depend on reports of sayings of

other Companions that confirm Ali's saying; or, if we are to conclude that the consensus was tacit (that is, by silent consent), we must take cognizance of the *entire body* of statements of the Companions in order to assure ourselves that there is not among them any expression of disagreement with 'Ali's statement. The determination of silence on the part of mujtahids seems to work somewhat differently from the determination of silence on the part of the Prophet. In the case of the Prophet, we need a report of his silence; in the case of mujtahids, we conclude silence from the absence of any reports of statements. Acts, too, can be expressive of a consensus, whether acts that all perform, acts that some perform and others approve by explicit declaration, or acts that some perform and others approve by silence. In all these cases, reports are the indispensable source of information.

It may at first seem to us strange to apply the concept of the report to the text of the Qur'an. That there is, however, warrant for doing so is evident from Āmidī's use of the phrase *khbar 'an allāh*, "the report of what God said,"³ with reference to the Qur'an. Only prophets are, of course, in a position to make such reports, since only they "hear" God speak. In the case of the Prophet Muhammad, "hearing" God speak means hearing God's speech upon the tongue of the Angel Gabriel. The Prophet reports what he has heard to his contemporaries, and they in turn transmit his report to others. This report takes the form "God said such-and-such." The phrase "God said" (*qāla allāh*) occurs, in fact, before every quotation from the Qur'an; what follows are words that the Prophet Muhammad heard upon the tongue of the Angel. The expanded, individualized version of the Prophet's report—which, though seldom if ever expressed in words, was always implicit in the Prophet's "reporting" of the words of God—was on the order of "I heard the following from the Angel Gabriel." The Prophet's Companions then reported (again more often implicitly than explicitly), "I heard the following from the Prophet Muhammad." The actual Qur'an is, of course, limited to the divine speech, but it is always embedded in the report beginning with "God said."

This is the quintessential report that is transmitted down through generations. The actual words of the Qur'an carry no importance unless we are aware that they are God's words, the words heard by the Prophet upon the tongue of the Angel; this we learn from "God said." The transmission of the Prophet's quintessential report of God's words down through the generations is, of course, normally described as recitation. But the Arabic term for recitation, *qirā'a*, is, as we have learned above, occasionally also applied to the transmission of quintessential reports of sayings, acts, and endorsements of the Prophet. The term therefore does not warrant our considering *qirā'a* to be a method of transmission unique to the Qur'an. The recitation of the Qur'an

(also called *tilāwa*), to be sure, entails something more than a verbatim recitation of words; it also entails a certain style of recitation that *is* unique to the Qur'ān. Muslim tradition, after all, attributes euphonious recitation (*tajwīd*) of the Qur'ān to the Prophet.

The inclusion of the Qur'ānic text under the heading of “the report” (and Qur'ānic recitation under the heading of “reporting”) may seem to be contradicted by Āmidī's distinguishing the Qur'ān from the Sunna by characterizing the former as a recitation (*tilāwa*) of the divine speech and the latter as a reporting (*ikhbār*) of the divine speech. However, there is no contradiction if we take “reporting” in this instance as a reference to the Prophet's reporting of divine meanings apart from divine words, in contrast to recitation, which is a reporting of the actual words. The very structure of the *Ihkām* shows that Āmidī fully intended to include divine words enshrined in the Qur'ān—the *aqwāl allāh*—in the category of reported things and to treat Qur'ānic recitation as a kind of reporting; for he places his discussion of *al-khabar* within the larger section of the *Ihkām* entitled “Concerning matters that are common to the Scripture, the Sunna, and the Ijmā'.” Furthermore, one of the two principal types of *khabar*, the *khabar mutawātir* has primary relevance to the Qur'ān.

Once a report is fully committed to writing or, as nowadays, to print, it enters an entirely different domain from that of oral transmission. A written or printed text exists continually through time, notwithstanding the fact that it will eventually age and need to be replaced by another text. (An Ash'arī theologian like Āmidī would, of course, insist that it was being continuously recreated.) A written or printed text does not exist forever, but it exists—unless subjected to deliberate destruction—over many generations. It is an object we can see and touch, whose palpability is entirely independent of anything we do. Once a scribe or printer has done his work, the text lingers on apart from any human agency until a human agent or some nonhuman force (for example, decay) destroys it.

Orally transmitted texts are entirely different. They exist as objective, public realities only when someone is speaking in the presence of others, and the words of which they are made, being spoken words, do not linger through time but rather cease to exist immediately after having been uttered. Strictly speaking, a text made up of spoken words cannot be transmitted in the sense of being passed as a physical object from one person to another. One can pass a physical object such as a manuscript or book to another person, but one does not similarly pass the spoken word. When I speak to another person, that person does not take hold of my actual words and keep them in his possession. Rather, my words produce for him a momentary and fleeting

experience of hearing, and when the hearing experience is over he may no longer be said to “have” my words. He may claim that he has them in his memory, but what exists in his memory is not my spoken word but a nonphonic likeness of my spoken word; the phonic reality is not itself present in his memory. The nonphonic likeness is, of course, an important component of a process that the medieval Muslims called “transmission” (*naql*). On the basis of this nonphonic likeness the other person will reproduce to the best of his ability the spoken word he heard upon my lips. As he speaks, words again appear in the public domain: a text is reconstituted, and as the whole process repeats itself again and again the text is said to be “transmitted.” “Transmission” is thus not a literal handing over but a process of repeated reconstitution within the public domain.

Each reconstitution of the text is an episode in its own right, and the transmission of the text may be said to be a chain of such episodes. The initial episode in the chain is the original constitution of the text, the report by an original witness of an event that has intrinsic importance for others. For Muslims this event, as we have earlier noted, may consist of a recitation of the Qurʾān by the Prophet Muhammad, a saying, act, or endorsement of the Prophet, or a saying, act, or endorsement of persons other than the Prophet that gives expression to a consensus.

Thus the texts that contain the fundamental indicators of the divine law are in their original form as fleeting and impermanent as the words heard upon the lips of any human being. There is, strictly speaking, no holy writ in Islam, no written document that may be regarded as constituting a direct revelation from God. God writes nothing on stone tablets, grants no special illumination to those who take up the pen, guides no council of elders or divines in the formation of a sacred canon, inspires no translator to produce a Septuagint, Vulgate, or Book of Mormon. There is no aura of sacredness surrounding the ʿUthmānic canon *qua* canon; owing to the defectiveness of its original script, it is not even a complete replica of the original Qurʾān but only a framework, a standard defining the limits within which Qurʾānic recitation, the true replica of the original, was to remain. As for the compilations of Sunnaic narratives, these represented nothing more than the efforts of human scholars to approximate to the best of their abilities—by sorting through a great mass of material—the original texts in which the Sunna was embodied. The original authoritative texts of Islam consist exclusively of words spoken centuries ago. We can never have direct contact with them; our contact can only be with the reconstituted form of those texts represented by ongoing verbal reporting or (less ideally but more commonly even in Āmidī’s time) by written compilations.

Since the original authoritative texts upon which the formulation of rules of law was to be based consisted of words spoken in the distant past, Islamic theoretical jurisprudence could not escape having to subject to the utmost scrutiny the process whereby these texts were reconstituted again and again over time through the reporting by individuals of their hearing of the texts.

We can perhaps appreciate more fully the enormity of the concern of the Muslim jurists with the transmission process if we compare their situation with the situation in which a modern lawyer or legal scholar finds himself. A lawyer in the United States must certainly deal with a great variety of texts (for example, the constitution, statutes, judicial decisions), but he will not usually need to concern himself greatly with the accuracy of these texts, the degree to which they conform to "original" texts. It will in fact not normally occur to him to draw a distinction between a text that is before him and a supposed original text. This is due partly to the fact that the texts with which he works will be the product of a very carefully controlled process of official publication and distribution and partly to the fact that the originals are themselves mechanically produced (typewritten, typeset, or whatever) texts that are not very distant from him in either time or space. Oral "texts" (for example, live statements from the bench, live statements from the floor of legislature) are, of course, a part of the modern legal process, but they give way to official records (minutes, transcriptions, published documents, etc.) that become *the* definitive texts of the entire legal process. The granting of official status to a written record—whether by act of the author or authoring body or by some other means—can in fact result in the sanctioning of departures (intentional or—less likely—unintentional) from the original oral "text." If we imagine that the lawyer had no such official texts at his disposal but had rather to base his work entirely on the spoken word as uttered, not within a relatively recent past but in a past centuries removed from him and that there was nothing intervening between him and that spoken word that could be regarded, by virtue of an official sanction, as a *substitute* for the spoken word, we can readily see how radically altered the situation of our lawyer would be and how preoccupied he would likely become with the subject of transmission.

Written texts had, of course, already by Āmidī's time come to assume great importance in the actual day-to-day work of Muslim scholars, and they have continued to have great importance down to the present time. Muslim scholarship has in fact for centuries depended primarily upon them. Even if one acknowledged that, with the exception of the ʿUthmānic canon, these written texts are relatively late and that they are not to be identified *simpliciter* with the original "live" texts, one may wonder why they could not, after their

emergence, have been regarded as an important link, or even the primary link, in the transmission process *thereafter*. Jewish and Christian scholars work with texts dating from considerably after the presumed originals, and, while they acknowledge the importance of oral transmission in the earliest phases of the development of their sacred literature, they look to extant manuscripts as an important *terminus a quo* upon which, in the absence of anything earlier, to build up a scientifically defensible reconstruction.

Why did medieval Islam not give rise to any kind of serious textual criticism of the sort that works with written documents? It would, of course, be anachronistic and unfair to the medieval Muslims to expect that they should have developed a scientific textual criticism such as is carried on in modern times. But textual criticism in the West has important antecedents in the later Middle Ages and Renaissance for which there is no parallel in the world of Islam. The reason for the disinterest in written texts on the part of the medieval Muslims clearly lies in a preoccupation with the transmission process *up to* the time when the written texts came into being and a lack of concern with transmission after the advent of the written texts. The medieval Muslims in other words saw the written texts as the culmination of the transmission process, not as a phase in that process; consequently, they did not seem to look much beyond the point where the written texts had emerged. To the extent they felt pressed to do so, they were bound by the methodology they had developed for evaluating the earlier transmission process to insist that transmission continued to be, and must always be, predominantly oral. Their methodology was, we should bear in mind, initially worked out during the time when the written documents were being produced, and once worked out it set the agenda for all future discussions of transmission.

We should also bear in mind that Muslim legal doctrine had become highly stabilized well before Āmidī's time and that most Muslim scholars were reluctant to try to improve upon what the great masters of the earlier centuries of Islam had produced. They were therefore for the most part interested, not so much in carving out their own doctrine, but in understanding, to the best of their ability, how the inherited doctrine had come into being and upon what methodology it had been based. Since the great masters, such as the eponyms of the four Sunnī schools, had not left behind extensive writings outlining their methodological principles, their followers of later generations took up this task. It was a way of making adherence to inherited formulations of the law more intellectually sustainable, although the principles worked out stood, to a large extent, on their own as a framework for any future attempt to improve upon the inherited formulations, should any individual scholar so dare. Since the focus of attention, generally

speaking, was upon the inherited formulations, or received doctrine, the Muslim jurists were understandably primarily concerned with the problems of transmission that the architects of that doctrine, the great masters, had dealt with, and they could only have had to deal with problems of transmission up to their time. The great Sunnaic compilations came into being somewhat after their time and in fact emerged out of their labors. These compilations are an important adjunct to the classical legal doctrine. The satisfaction of the great majority of scholars with the inherited doctrine, which they viewed as an unsurpassable achievement, accounts at least in large part for their disinterest in the transmission of texts as a present and future process. To the extent that transmission continued to occur, it had somehow to be the same as it had been earlier, an oral transmission; and there was a firm belief that it did occur, even if it need not be scrutinized carefully. Especially in respect to the Qur'anic text oral transmission was believed to be an ongoing and vital process upon which confidence in the accuracy of the text depended.

In speaking of the written texts as the culmination of the process of oral transmission, I should explain that in the case of the Qur'anic text I have in mind, not the ʿUthmānic text, which was written in a defective script, but the later plenary texts that incorporated, through a system of vowel signs and other diacritical marks, the several systems of recitation (*qirāʾāt*) that had previously been transmitted solely through live recitation. The earliest written Qur'anic texts could not, on account of the *scriptio defectiva* that they employed, replace oral transmission. For this reason, when the Muslim jurists concerned themselves with the transmission process that had taken place in the period up to the development of the classical doctrine, they were as much interested in the bearing this subject had upon the Qur'anic text as in the bearing it had on other authoritative texts. Furthermore, there was, as I have just intimated, a sense that the accuracy of the Qur'anic text would always depend on oral transmission rather than on the copying skills of scribes.

We may now turn to Āmidī's discussion of *al-khabar*. I have chosen to translate it as "report" and shall continue to adhere to this translation, as this is, of the various options, the one that is in my judgment most appropriate in the context of Islamic theoretical jurisprudence. This is not to say, however, that it conveys with absolute precision the meaning of the Arabic term. No translation does. The term appears throughout many of the Islamic sciences and has special importance in logic (*mantiq*) and in that branch of rhetoric called *al-maʿānī* which dealt with the appositeness of expressions. It is thus by no means a special term of the science of theoretical jurisprudence but

retains, when used within that science, the meanings it carries in the other sciences.

Āmidī turns first to the task of defining *khavar*.⁴ He rejects the contention of some jurists that it signifies a primitive concept, one that is “known necessarily” and is therefore not subject to strict definition. But he is critical of those approaches that sought to define *khavar* in terms of its being subject to evaluation as true or false. He prefers to define *khavar* as “a vocable [in this case a complex of vocal sounds] that, by virtue of its primordial assignment [to certain meanings], signifies, in a manner that renders subsequent silence appropriate and further addition for the sake of completion unnecessary, an ascription of one term [*maʿlūm*] to another or a denial of such an ascription and that is accompanied by an intention on the part of the speaker to signify the ascription or denial of the ascription.”⁵

The best way to understand this complex definition is to proceed segment by segment. First of all, the definition tells us that a *khavar* signifies an ascription of one term to another or a denial of such an ascription. The Arabic term I have translated as “term” is *maʿlūm* “known,” which is intended to include both existent and nonexistent (imaginary) things. It is a replacement for the commonly used *shayʿ* “thing,” which for Āmidī carries too strong an implication of existence. In Muslim logic the usual designation for a term is *taraf*. In telling us that a *khavar* signifies an ascription of one term to another or a denial of such an ascription, the definition is taking us into the realm of logic. Any reader familiar with logic as developed by Muslim logicians would understand from the definition that a *khavar* is made up of two parts, a subject and a predicate, that each part represents a term, and that the combination of subject and predicate signifies an ascription of the term represented by the subject to the term represented by the predicate. Thus “Zayd is a scholar” is a *khavar* that signifies the ascription of the category of scholar to Zayd, and “Zayd stood up” is a *khavar* that signifies the ascription of the category of standing up to Zayd. In these cases an ascription is affirmed; in the cases of “Zayd is not a scholar” and “Zayd did not stand up” an ascription is denied.

Second, the definition tells us that a *khavar* is a complete and self-sufficient unit of speech. “The man who is standing” is not a *khavar*, even though it entails an ascription of “standing” to “the man”; “The man who is standing is a scholar” is a *khavar*. The former asks for something to be added for the sake of completion, the latter does not; silence may therefore appropriately follow the latter but not the former.

Third, the definition tells us that a *khavar* entails an intention to signify an ascription or denial of an ascription. If someone says “Zayd is a scholar” while sleeping, or in a delirious state, or by mistake (when he meant to say

"Zayd is a student"), or in mere repetition of someone else, the utterance is not a *khavar*.

Āmidī's definition of *khavar*, with its connections with logic, seems to lead us in the direction of "proposition" as a suitable translation rather than "report." In logic when one speaks of an ascription of one term to another, one has in mind the terms of a proposition. I have myself elsewhere translated *khavar* as "statement" on the ground that a proposition, strictly speaking, belongs within the domain of thought, whereas *khavar* clearly, by Āmidī's definition, belongs within the domain of verbal utterances or vocables (*alfāz*).⁶ Muslim thought regards the *khavar* as one of the two principle categories of meaningful speech, the other being *inshā'*, speech that does not affirm or deny an ascription of one term to another (commands, exclamations, wishes, etc.).

My reason for persisting in this book in translating *khavar* as "report" is that it fits Āmidī's use of this term in the *Ihkām*. A report is, after all, a kind of statement, and Āmidī's definition of *khavar* certainly covers it. In the context of discussions of the transmission of texts, one is concerned with statements of the type "I heard so-and-so say" or "So-and-so said to me." We have no difficulty in referring to such statements as reports. One can perhaps argue that every statement is a report to the extent that it entails an intention to impart information about the world—a real fact of some sort—to another. We noted earlier that the Muslim jurists had a special word for addressed speech, *khitāb*. A report is a sort of addressed speech that entails an intention to impart information about the world: *khitāb* need not entail such an intention. One would wish to exclude from the sort of statements under consideration purely logico-mathematical statements or statements relating to an imaginary world. As we shall shortly see, Islamic theoretical jurisprudence is primarily concerned with statements that are grounded in sensory experience, statements that *report* what has been heard or seen.

Having defined *khavar*, or, as we shall say hereafter, the report, Āmidī proceeds to consider three different ways to classify reports.⁷ First, a report may be true or false. Second, a report may be *known* to be true, *known* to be false, or *not known* to be either true or false. Third, a report may be *mutawātir* or *khavar al-wāhid*, terms that will be explained later. In dividing reports into true and false reports (or statements, as English-speaking philosophers would more commonly say), Muslim thinkers relied upon a correspondence theory of truth. A true report is a report that "corresponds with what is reported," a false report is a report that "does not correspond with what is reported." This way of stating the correspondence theory may seem somewhat clumsy to readers familiar with modern versions of that theory. Modern philosophers

would tend to speak of a correspondence between “what is reported” and some fact, or state of affairs, in the external (extralinguistic, extramental) world. “What is reported” would be for them a reference to what the words of the report mean, as opposed to a fact in the world. In Āmidī’s usage, however, “what is reported” (*al-mukhbar bihi*) can only be a reference to a fact in the world, a reported fact. A report is therefore true if the report (that is to say, its meaning) corresponds with a reported fact or reality: in order for a report to be true, something in the world must really be reported. A report is false if this correspondence does not occur.

In justifying the standard version of the correspondence theory, the medieval Muslims had to deal with an alternate version propounded by the famous litterateur and Muʿtazilī theologian Jāhiz. Jāhiz maintained what may be called a “double-correspondence” theory of truth. In order to be true a report had to correspond not only with a fact in the world but also with what the speaker believed to be a fact. If either correspondence was missing, the report was not true. Jāhiz put forward the example of a speaker who says, “Zayd is in the house,” when he is fully convinced that Zayd is not in the house. If it turns out that Zayd, contrary to the speaker’s belief, really *is* in the house, then we cannot say that the speaker’s report is true, since the speaker was intentionally fabricating, and we cannot say that it is false, since it corresponds with a reality in the world, namely, Zayd’s being in the house. Hence we must regard the statement as neither true nor false. The same can be said if the speaker says, “Zayd is in the house,” really believing that Zayd is in the house when as a matter of fact he is not.

Āmidī describes the debate between adherents of Jāhiz’s view and adherents of the standard view as a dispute over terminology, not over a substantive issue. There is no reason, he says, why we cannot take “true” as referring to correspondence with a fact in the world quite apart from any correspondence with an inner belief on the part of the speaker and “false” as referring to its opposite. This is what the majority of the medieval Muslim thinkers have in fact done. “Zayd is in the house” is true if Zayd is in fact in the house, whether the speaker believes he is in the house or not. This theory of truth was especially suitable for Islamic theoretical jurisprudence, since when one spoke of a report of a saying of the Prophet as being a true report one was not primarily interested in any correspondence, or lack of it, between the report and the inner belief of the speaker.

The rise of the two theories of truth, it may be noted, can be attributed, at least in part, to the fact that there are no separate terms in Arabic for “true” and “truthful,” on the one hand, and “false” and “lying,” on the other. *Sādiq* and *kādhīb*, the two terms used in discussions of truth, are both ambiguous:

sādiq can mean either "true" or "truthful" and *kādhīb* either "false" or "lying." "True" and "false" clearly have to do solely with correspondence or noncorrespondence with facts in the world, while "truthful" and "lying" have to do solely with correspondence or noncorrespondence with what a speaker believes to be a fact, whether correctly or incorrectly. Discussions of truth among Muslim jurists apparently entailed an agreement that *sādiq* and *kādhīb* would mean, for the purposes of discussion, "true" and "false."

The second classification of reports touches on matters of incalculable importance for Muslim thought considered as a system.⁸ Here the focus of attention shifts from truth and falsity as such to the *knowledge* of truth and falsity. Since the entire edifice of medieval Islam rested upon the conviction that certain reports can be known to be true, it was important that these reports be specified.

Āmidī divides such reports into two main types. There is, first of all, the report that is known to be true *from the report itself*. Just what this means I shall explain shortly. Here I shall simply note that this type of report occupies a central place in Muslim thinking about the transmission of texts. Second, there is the report that is known to be true, not from the report itself, but from something other than the report that shows that the report is true. This type includes divine reports (*akhbār allāh*: we might here again rather say "statements"); reports of the Prophet concerning what was revealed to him; reports that God, the Prophet, or an Ijmā'ic consensus declares to be true; reports that agree with other reports known to be true; and reports that conform to the dictates of reason or to the data of sensory experience. We know that divine reports are true by virtue of the rationally demonstrable theological principle that God does not make false statements. We know that the Prophet's reports concerning what was revealed to him are true by virtue of miraculous signs that attest to their truth. (This implies that when the Prophet is reporting on something other than what was revealed to him, his report cannot be known to be true, although as we shall see shortly it may be held to be probably true.) We know that reports on which there is an Ijmā'ic consensus are true by virtue of the Prophet's declarations (which in turn are reports of what was revealed to him) to the effect that the consensus of the community is protected against error. The ground of our knowledge of truth in the remaining examples needs no explanation. Āmidī is here taking us back, obviously, into the domain of epistemology. As for his examples of reports that are known to be false, these consist largely of contraries of the above examples.

The category of reports that are not known to be either true or false embraces three subcategories: reports that are held to be probably true,

reports that are held to be probably false, and reports that fall between these two subcategories. The first of these subcategories is extremely important for Muslim thinking about the transmission of texts. It embraces reports pertaining to rules of law that come from persons having a reputation for trustworthiness and truthfulness. As we shall see, some Muslim jurists sought to place such reports in the category of reports that are *known* to be true. They regarded trustworthiness as among the factors, extraneous to a report, that engendered a knowledge of the truth of the report. Āmidī and the majority of jurists were not, however, willing to accord such force to trustworthiness.

The third classification of reports introduces the two categories that are to be Āmidī's primary concern throughout the remainder of the section of the *Ihkām* on the transmission of texts: the *mutawātir* report and the *khbar al-wāhid* report, or "report of the individual." The first category, for which I shall, for reasons to be shortly explained, retain the Arabic designation, turns out in Āmidī's subsequent discussion to be coterminous with the category of "reports that are known to be true from the reports themselves," which emerged out of the second classification; for it is only the *mutawātir* report that is known to be true without referral to any factor other than itself. The "report of the individual," then, embraces all reports that are not *mutawātir* (as Āmidī's definition of this type of report, to be considered presently, shows). It thus embraces reports that are known to be true through extraneous factors of the sort we have just considered (for example, miraculous attestation). But it also embraces reports that are not known to be true or false. Within this category, reports that are held to be probably true have special importance for the transmission of texts, and it is these reports that the Muslim jurists generally have in mind when discussing the "report of the individual." It is with respect to these reports that the trustworthiness of the reporter becomes a major consideration, and for all practical purposes "report of the individual" becomes synonymous with "report of the trustworthy individual" in actual discussion.

To turn first to the *mutawātir* report, I have said that an original text, considered as a physical entity, as words heard upon the lips of a speaker, does not persist through time but disappears instantly and that it can therefore be transmitted through time only in the sense of being continually reconstituted as people hear it and report what they have heard to others. The text that reaches us by means of this process can therefore only be a replica of the original, never the original itself. If it is an exact replica, it has as much validity for us as the original would have, if we had access to it. The fact that it is a replica puts us at no disadvantage. But how do we know when a text that is reported

or recited to us is an exact replica of an original that existed centuries ago? How can we know, for example, that the words we now hear upon the lips of a Qur'ān reciter are an exact replica of words heard long ago upon the lips of the Prophet Muhammad, words that he claimed to have heard upon the lips of the Angel Gabriel? How can we know that sayings that we hear religious scholars quoting as from the Prophet are an exact replica of sayings that were in the distant past actually spoken by the Prophet? It is questions such as these that the concept of the *mutawātir* report is intended to answer.

In order to grasp the full import of Āmidī's discussion of this concept, it is important that we understand something about its role in Muslim epistemology. Among the types of knowledge that the Muslim jurists and theologians endeavored to account for was the knowledge of phenomena beyond the reach of our senses. This included the knowledge of past events of which we were not direct witnesses as well as knowledge of present phenomena that are distant from us. The Muslim jurists were convinced that such knowledge existed: we know, for example, that ʿUthmān was killed by an assassin even though we are centuries removed from the event, and one who has never set foot inside Mecca knows that the city exists. To deny such knowledge was, to them, utter folly. But how was such knowledge to be explained? Quite obviously any knowledge I may have of events or phenomena in the spatiotemporal realm that I have not myself directly experienced will be acquired somehow from reports of persons who have directly experienced those events or phenomena. My knowledge of the events or phenomena will be tantamount to a knowledge that their reports are true. My claiming to know that ʿUthmān was assassinated can only be tantamount to claiming to know that the reports of the assassination are true. My knowledge of the assassination can never be like the knowledge of eyewitnesses: theirs will be rich in sensory input; mine will be limited to an image, however vague, that will arise in my mind from my understanding of the meaning of the words employed in the reports.

But how is it that I am able to know that any report of a past event or distant phenomenon is true? How do I explain the fact that I know that the report of a cube-shaped shrine with a black stone embedded in one wall in Mecca is true even though I have never been in Mecca? The answer that Muslim theory gives to this question is that I know that the report is true directly from the report itself. Certain kinds of reports, called *mutawātir* reports, have this quality of engendering in the people who hear them a knowledge that they are true. I obviously do not know the report concerning the shrine in Mecca to be true on the basis of empirical verification since I have never been in Mecca. We shall return to the concept of the *mutawātir* report shortly.

Since texts are transmitted through a process of reporting, we may say that our knowledge that any text is an exact replica of an original text heard upon the lips of some authority is tantamount to a knowledge that a report is true, which in turn is tantamount to a knowledge of a past event. Let us say that the report takes the form "I heard the King say such-and-such." What the report is telling us is that certain words included in the report are an exact replica of words heard upon the lips of the King. If I claim to know this report to be true, I am in effect claiming a knowledge of a past event, a knowledge that the King did indeed utter words exactly like the words mentioned in the report. The same is true with respect to the Islamic texts presently under discussion. If I claim to know that the words "My people will not agree upon an error" are an exact replica of words originally heard upon the lips of the Prophet Muhammad, I am claiming to know that a report to the effect that the Prophet Muhammad did indeed utter words exactly like those words is true and thus to know that the Prophet did utter the words in question. For this report is clearly a report of a past event, an event that occurred beyond the reach of my experience; and in claiming to know that the report is true I am claiming a knowledge of the past event.

Thus the question of how one knows that a given text is an exact replica of an original text is reducible to a question of how one knows that reports of past events are true. Since when we report words that we hear others speak we are not normally so fussy as to say, "So-and-so spoke words exactly like the following ones that you will hear me speak," and since the reports with which the Muslim jurists were concerned were never so fussy, I shall hereafter avoid this fussiness and adhere to the simpler form: "So-and-so said...." I have in the preceding pages emphasized the distinction between a text and an original of which it is a replica only because the distinction has theoretical importance. Particularly in regard to the Qur'anic text Āmidī makes it clear that the text one hears from a reciter is but a replica (*mithāl*) of the original; the distinction between replica and original has for him theological significance that we have previously considered.⁹ In the following pages I shall assume that enough has been said about this distinction to assure that the reader will keep it in mind. It is a distinction that can apply to any report of statements, even those we make constantly in ordinary situations. While we may freely admit that when one says, "So-and-so told me, 'I'll meet you at the village well,'" one is assuming a distinction between one's own words, considered as physical entities, and the original words of the person quoted, we do not usually consider the distinction to be of any importance. It is important in the present context only because Muslim thought tends to regard a text as a body of physical words that issues from human mouths and falls upon

human ears. But the distinction between original and replica was not always uppermost in the minds even of the Muslim jurists.

The question we are concerned with, then, is: how do we acquire the knowledge that a report on the order of "X said such-and-such" is true? Muslim theory, we have noted, maintains that if the report is *mutawātir* we acquire this knowledge directly from the report. As pointed out in the discussion of Āmidī's second classification of reports, if the report is not *mutawātir*, then we must acquire this knowledge from something other than the report itself, from some indication that the speaker tells only the truth. If a prophet reports to us (assuming we are among his contemporaries), "An angel appeared to me and said such-and-such," we cannot know from the report itself that it is true, for it is not a *mutawātir* report for reasons shortly to be considered. We are therefore in need of a sign that assures us that whenever the prophet claims to have received anything from God through the Angel he is telling the truth. Once we have this sign, we know that the prophet's report is true.

We must now turn to Āmidī's discussion of the concept of a *mutawātir* report. First Āmidī takes up the task of defining *tawātur*, a verbal noun related to *mutawātir*.¹⁰ The lexical meaning of the term, he notes, is "a succession [*tatābu*]^c of things one after the other with an interval in between." However, as a technical term of the science of theoretical jurisprudence it refers to "the successive reporting of a group that yields knowledge of the fact reported (*mukhbar*)."¹¹ It should be noted that it is not, according to this definition, just any successive reporting of a group that constitutes *tawātur*, but only the successive reporting that yields knowledge of the fact reported. The phrase "that yields knowledge of the fact reported" narrows the field; it is, within the definition, a differentia, one that plays a crucial role in determining the technical sense of the term. It is because of this component of the definition that I shall in the following pages use the Arabic term itself rather than a translation. On the strength of its lexical meaning (just noted), *tawātur* might be appropriately translated as "recurrence." But this English rendering falls so short of the technical sense that to employ it could cause confusion as we proceed. For the medieval Muslim jurist the technical sense was so internalized as a result of constant usage that he could not possibly lose sight of it. "Recurrent" carries for us none of this baggage.

The term "successive" should, I think, be understood to reflect the perspective of the individual who hears reports rather than the perspective of the reporters. The reporters are not taking turns in their reporting; they are not aware of any particular order in their reporting. It is the individual who experiences a sequence as he encounters reports "one after the other with an interval in between."

Āmidī defines *mutawātir* along slightly different though complementary lines. A *mutawātir* report is “a report of a group that yields of its own accord knowledge of the fact reported.”¹² This definition makes no mention of succession, though it is implied in the term “group”; on the other hand, it inserts the phrase “of its own accord,” which may be presumed to be implied in the definition of *tawātur* (in the word “yields”). I shall, for reasons just mentioned, also refrain from using an English rendering of *mutawātir* in the following pages, employing the Arabic term itself.

The phrase “that yields knowledge of the fact reported,” which appears in the definitions of both terms (with the insertion of “of its own accord” in the definition of *mutawātir*), calls for brief comment. Here we clearly have an emphasis on knowledge of an event or phenomenon in the world as against knowledge that the report is true. In referring to the event or phenomenon as *mukhbar* (“what is reported”),¹³ the definition seems to assume that the report is true, for only if it is true will the *mukhbar* constitute an event or phenomenon knowledge of which is yielded. One may perhaps more freely translate *mufidun li'l-ʿilmi bi-mukhbarih* as “that yields the knowledge that what is reported is a real event or phenomenon.” This comes close to meaning “that yields the knowledge that the report is true.” That Āmidī is fully aware of the equivalency between the knowledge of a reported event or phenomenon and the knowledge that a report is true is evident from his earlier categorization (in the discussion of the second classification of reports)¹⁴ of the *mutawātir* report as “a report that is known to be true entirely from the report itself.”

Although Āmidī, after having completed the task of definition, does not turn immediately to the subject of the “conditions governing *tawātur*,” it will be helpful for us first to consider his discussion of this subject before considering what he has to say about topics that come before it in his own agenda.¹⁵ By “conditions governing *tawātur*” Āmidī seems to mean the conditions that a report must satisfy if it is to carry on the essential function of a *mutawātir* report—yielding entirely of its own accord the knowledge that it is true. The conditions governing *tawātur* are an answer to the question: what is required in order for a report to be truly *mutawātir*, that is to say, in order for a report to be able entirely of its own accord to yield the knowledge that it is true?

Āmidī mentions a number of conditions as being agreed upon by Muslim jurists. These he divides into two categories: those that pertain to the reporter, of which there are four, and a single remaining condition that pertains to the one who receives the report, the hearer (*al-mustamiʿ*). The conditions that pertain to the reporter are as follows. First, the number of the reporters must be such as to rule out the possibility of collusion or collaborative fabrication. Second, the reporters must *know* that what they report was

so, not just think it was so; that is to say, their report must be based on knowledge of what is reported, not on mere opinion. Third, this knowledge must be based on sense perception, not on deductive argument; the reporters must, in other words, report what they heard or saw, not what they deduced from premises. As will be recalled from our discussion of the epistemological premises of the science of theoretical jurisprudence, Āmidī includes knowledge based on sense perception within the category of necessary knowledge, as opposed to discursive knowledge. Fourth, where the reporting takes place over a long period of time, the above conditions must apply equally to every successive stage in the reporting process, that is to say, to every generation of reporters, those of the first generation, those of the middle generations, and those at the end of the reporting process. As for the condition that pertains to the hearer, it is simply that the hearer must be *capable* of receiving the report. A person who is asleep, deaf, or mentally incompetent obviously does not possess this capability.

The second and third conditions that pertain to the reporter imply a kind of empiricism. The reporters play a role not unlike that of the witness in law. They report only what they have heard or seen. One does not doubt but rather *knows* what one has experienced directly. This knowledge is by definition *not* opinion: it is not appropriate for one who has heard another say something to say, "In my opinion so-and-so said such-and-such." Nor is it discursive knowledge, since it is in no way derived from prior premises. A witness does not, in other words, state what he thinks took place, nor does he attempt to deduce, in the manner of a detective, what took place. But it is not sufficient, in order for a report to be *mutawātir*, that the reporters have acted as true witnesses, reporting only what they have experienced directly. For reporters may report what they have experienced with absolute faithfulness, and yet their report will not yield of its own accord the knowledge that it is true. There is yet another factor that enters the picture: number. The number of the reporters must be such as to rule out the possibility of collusion or collaborative fabrication.

It is of crucial importance for our understanding of Muslim thinking about *mutawātir* reports that we realize that none of the conditions stated thus far is sufficient in itself. Each, we may say, is a necessary but not sufficient condition. The significance of this bears in a special way upon the condition that relates to the number of reporters. Āmidī's statement of this condition indicates that the number of reporters must be such as to rule out the possibility of collusive fabrication. As we shall shortly see, the notion of a number so great as to make collusive fabrication impossible was not without problems. Had not Christian and Jews, whose number would seem to have precluded

collusion, reported false information about what their prophets had done and said? Indeed, the universally accepted Muslim dogma of perversion (*tahrif*) by earlier monotheistic communities (*ahl al-kitāb*) of their scriptures required that the answer be yes. For this reason, number alone—even a number perceived to be great enough to rule out collusive fabrication—could not be a sufficient condition. Otherwise, the first two of Āmidī's conditions would not have been necessary as conditions *independent from* the condition relating to number. Given a certain requisite number of reporters, the knowledge that the report was true would immediately arise. But in fact the matter was not so simple, as the Muslim jurists were well aware.

One senses a dilemma in the Muslim discussions of the *mutawātir* report. There was a general conviction that it was possible to have a genuine knowledge of things that lay outside the realm of direct experience, a knowledge of major events one had not witnessed directly, among which were included the utterance of certain words by the Prophet. Along with this conviction went a realization that this knowledge, not being rooted in direct experience, was based entirely on reports functioning on their own as yielders of knowledge. In other words, it was an observable fact—or so it seemed—that certain reports yield entirely of their own accord the knowledge that they are true. But it was also an observable fact that other reports did not yield such knowledge.

The problem was how to distinguish reports that do yield such knowledge from reports that do not. The “conditions” governing *tawātur* represent an attempt to solve this problem. Number could not be a sufficient condition; yet it seemed apparent that number was involved in some way. Quite obviously, the report of a single individual, or of a small number of individuals, could have a definite empirical basis and still not yield the knowledge that it is true, since the hearer in such cases was clearly capable of doubting its truth. Yet it was clear that if a report had no empirical basis at all it would never engender the knowledge that it was true: how could it, if in fact it was not true? The knowledge that a report that is not true is true is an impossibility. On the other hand, it seemed an observable fact that very large numbers of people were sometimes capable of reporting falsehoods. Therefore, if number was a factor, it could not be a sufficient condition. The truth of a statement—its having a real empirical basis—and its transmission by a large number of people seemed to work together as interdependent factors in giving a *mutawātir* report its character as an intrinsically knowledge-engendering report.

The conditions governing *tawātur* concerning which there is disagreement are the following: (1) that the reporters not be confined to a particular

country and that they be beyond counting; (2) that they not all be of the same lineage, or nationality, or religion; (3) that they all be Muslims known to be trustworthy; (4) that they not be compelled by the sword; (5) that they be immune from error; and (6) that the lowly classes be included among them. Āmidī rejects all of these additional conditions. The first and second do not take into account the fact that events are most commonly witnessed by people of a particular locality, lineage, nationality, or religion. The second would in fact rule out the reports by Muslims of the Qurʾān and Sunna. The third and fifth are invalid because there are clear cases of knowledge of the truth of reports where the reporters are not trustworthy Muslims or Muslims who enjoy immunity from error. We know, for example, of the assassination of a Byzantine king from the reports of Byzantines, even though they are not trustworthy Muslims. The fourth of these additional conditions is invalid because no convincing reason can be given why the reports of people who are compelled to speak should not, if they are speaking what they know on the basis of sense perception to be true, give rise to knowledge of their truth; if they are not speaking what they know on the basis of sense perception to be true, then two of the generally accepted conditions (see above) have not been met, so that the reports will definitely not yield knowledge. It is interesting that Āmidī rejects the sixth condition on the ground that the knowledge of the truth of reports arises within us more readily when the reporters are all notables and aristocrats (*al-akābir waʾl-shurafāʾ al-ʿuzamāʾ*).

From the four agreed-upon conditions governing *tawātur* we may construct the following account of how the process works. Let us say that the Prophet says, "I heard the Angel say, 'Recite in the name of your Lord.'" All those Companions of the Prophet who heard the Prophet say these words—whose number, let us assume, is considerable—will convey to second-generation Muslims a report having the general form: "The Prophet said *X*." Each individual Companion will, in order to emphasize the empirical basis of his report, be able to cast it in the form: "I heard the Prophet say *X*," even if he does not do this in fact; but the quintessential report, or "text," that all the Companions will be conveying to the second-generation Muslims is "The Prophet said *X*." Each of these second-generation Muslims, upon hearing this quintessential report over and over again from the Companions, reaches the point where he is able to say, "I know that the report that the Prophet said *X* is true" (which, as we have noted, is tantamount to saying, "I know that the Prophet said *X*"). Each then conveys the same report to third-generation Muslims. The quintessential report is still "The Prophet said *X*," although each second-generation Muslim will be capable (whether he does so or not) of expanding it into: "I have heard a great many of the Companions say that the Prophet said *X*,"

thus emphasizing the empirical basis of the reporting process. Each third-generation Muslim then hears this report from a large number of second-generation Muslims, and the whole process repeats itself. In this way the knowledge that the report that the Prophet said *X* is true emerges in each generation over a long period. (As we learned from Āmidī's discussion of the authority of the Ijmā^c, the saying "My community will not agree upon error" was not included within the *mutawātir* category.)

A *mutawātir* report is said to yield *of its own accord* the knowledge that it is true in the sense that it yields this knowledge simply by virtue of what it is—a report that has met all four of the agreed upon conditions governing *tawātur*. The conditions must therefore not be thought to be extraneous to the *mutawātir* report. Although these conditions are not incorporated into Āmidī's definition, they nonetheless enter into the constitution of such a report. A definition in the intellectual tradition that Āmidī represents has the sole purpose of distinguishing the definiendum from all other things. The conditions are not relevant to the attainment of this purpose. They do, however, contribute to a fuller understanding of the nature, or essential functioning, of the *mutawātir* report.

Āmidī tells us that the *tawātur* principle, the idea that a report may of its own accord yield the knowledge of its truth, was accepted by "all" (*al-kull*).¹⁶ He seems to mean by this *all Muslims*, for he next tells us that the principle was rejected by two non-Muslim groups, the Sumanīya and the Brahmans. There is, in other words, no mention of Muslims who reject the principle. We are therefore given to understand that there was among the Muslims a consensus in favor of the principle.

This does not mean, however, that Āmidī considers the validity of the principle to be determined by the Ijmā^c. To begin with, the process of legitimizing anything on the basis of the Ijmā^c was so fraught with problems that to make the *tawātur* principle dependent on it would only weaken that principle. Furthermore, the whole point behind the development of the *tawātur* principle among the Muslims was *that it provided an alternative to the Ijmā^c* as a guarantee of the authenticity of texts. If the Ijmā^c was allowed to creep in as the guarantor of the *tawātur* principle, then the purpose behind that principle would be defeated. In any case, Āmidī has insisted that the authority of the Ijmā^c rests entirely on texts whose meaning and authenticity in no way depends on the Ijmā^c itself. He is too astute in his avoidance of *principio principii* to get caught in a trap here. Finally, since the *tawātur* principle seems to have been developed at a relatively late point in the historical development of Islam, possibly in the century or so after Shāfi'ī's time, we may conclude that Āmidī's "all" meant all Muslims in his own time or in recent times.

Earlier scholars who had made the *Ijmāʿ* perform many of the services later assigned to *tawātur* may not have been familiar with the *tawātur* principle. On the other hand, as this principle crept into the thinking of Muslims, some of them, as we have seen, tried to identify the *Ijmāʿ* with *tawātur*. Āmidī is among those who refuse to allow any connection between the two concepts.

The *tawātur* principle appears to have been irresistible to medieval Muslim thinkers once they had given it serious consideration. For one thing, it provided a sure basis for confidence in the reliability of the currently recited Qurʾānic text as a faithful replica of the original Qurʾān revealed to the Prophet Muhammad. I have suggested that even the Qurʾān-reciter is through his recitation implicitly reporting something: he is reporting (even if it would never occur to him to say so) that he heard the recited text upon the lips of someone else, namely, the teacher or teachers under whom he studied. This reporting is assumed by the credential he carries attesting to his lineage as a Qurʾān-reciter. Since this “report” of the Qurʾān (“God Almighty said such-and-such”) satisfies the four agreed-upon conditions governing *tawātur* (which means, among other things, that it is heard from the lips of many Qurʾān-reciters other than the particular reciter one may happen to be in contact with in any given instance of hearing the Qurʾān), it constitutes a *mutawātir* report and therefore gives rise, entirely of its own accord, to the knowledge that it is a true report, that the words recited are indeed the very words (or an exact replica of the words) heard upon the lips of the Prophet Muhammad. Within the Qurʾānic sciences it became customary to refer to the seven generally accepted systems of Qurʾānic recitation—usually called the seven “readings” (*al-qirāʾāt al-sabʿ*)—as the “*mutawātir* systems [or readings].” If we keep in mind the specifically *technical* sense of the Arabic term *mutawātir*, we can appreciate the significance of the application of the term to systems of Qurʾānic recitation and the great gap that separated *mutawātir* readings from the others: a *mutawātir* reading of the Qurʾān produced in the minds of those who heard it (if indeed they heard it, as was required, “over and over again with an interval in between”) the knowledge that it was a true and faithful reading. But the medieval Muslims were convinced that there was more, beyond the *mutawātir* readings of the Qurʾān, that belonged in the category of *mutawātir* reports: at least some of the reports in which the Sunna was embodied belonged in this category, and there seems to have been a sense at least among some scholars that certain reports (presumably a very few) of statements giving expression to the *Ijmāʿ* also belonged in this category. However, just which reports—beyond the *mutawātir* readings of the Qurʾān—were *mutawātir* was hard to say. While the *mutawātir* readings of the Qurʾān constituted a well-defined corpus, any other *mutawātir* reports that

may have existed did not. There was never an attempt to single out or compile such reports. The great compilations of *hadīth* narratives certainly do not represent such an effort. To suggest that these compilations could be labeled “*mutawātir*” would be to put them on a par with the Qur’ānic readings, something medieval Muslim scholarship would most certainly not allow.

Since opposition to the *tawātur* principle came from outside the Muslim community, Āmidī, in defending that principle,¹⁷ must necessarily step outside the sphere of inter-Muslim dialectic. While Muslim jurisprudential dialectic is typically inter-Muslim (in contrast to Muslim theological dialectic, which more often enters the arena of debate between Muslims and non-Muslims), it does at certain points move into the larger arena. This is one of those points.

How, say the opponents, can the report of a group do what the report of individual members of the group cannot do? Whatever is true of the part must also be true of the whole. Wrong, says Āmidī; it is not true of each part of a house that it is a house, but only of the house as a whole. But what are we to do with reports of large groups that we know to be false? Āmidī’s answer is that it is not the size of a group alone that makes a report *mutawātir*. He is not claiming that the report of a large group must yield knowledge but only that it sometimes yields knowledge. Other factors are required beyond sheer number in order to guarantee that knowledge will arise.

Much more serious than the debate over the validity of the *tawātur* principle, which seems, once developed, to have had a captive audience among Muslims, is the debate over the epistemological question of how a *mutawātir* report gives rise to knowledge.¹⁸ More precisely stated, the question is whether the knowledge that arises from a *mutawātir* report belongs within the category of necessary knowledge (*al-‘ilm al-darūrī*) or deduced knowledge (*al-‘ilm al-nazarī*)? With this question we return to the arena of inter-Muslim dialectic. The great majority of Muslim jurists, we are told, hold that this knowledge is necessary, while a few—Āmidī mentions three names—maintain that it is deduced.

According to the latter, the knowledge of the truth of a report is derived through a process of reasoning on the order of the following: those who have reported *X* could not, given their number and diversity of conditions, have agreed upon a falsehood (there are problems with this premise, which Āmidī subsequently notes); the report upon which they all agree is a report of a fact (as opposed to a report of an opinion or belief held by the reporters); therefore, the report is true. The second premise in this argument implies that if a report does not take the form of a report of a fact—if it does not, in other words, include the words “I heard so-and-so say such-and-such”—it cannot

be regarded as a true report. A report that states "I think [or hold the opinion] that so-and-so said such-and-such" will not yield in the mind of any hearer the knowledge that it is a true report of a fact, even if one hears it from a number of people, which might be thought to preclude the possibility of collusion upon a falsehood. Quite obviously, it is the first premise that plays the crucial role in the argument. Āmidī notes that Ghazālī maintained that such reasoning does indeed occur prior to the emergence of knowledge that a report is true, although the mind is not conscious of it: the reasoning is, in other words, subliminal.

Those who take the opposite view—that the knowledge that arises from the *mutawātir* report is necessary knowledge—argue that our knowledge that the report that the Prophet said *X* is true is not the result of any sort of reasoning but is linked directly to the recurring experience of *hearing* the report. Given the requisite number of experiences of hearing any empirically based report, a knowledge of the truth of the report simply "came about" (*hasala*). No one in his right mind would, for example, deny the truth of the report that the Muslims fought the Quraysh of Mecca at the Battle of Badr; yet on introspection one finds that this certainty is not the result of any remembered reasoning. We do not reason our way to the knowledge of the truth of this report; we simply hear the report again and again until we reach the point where this knowledge emerges within us of its own accord. If the report was not empirically based and therefore true, this knowledge would not emerge. There is a mystery here—how it is that empirically based (and therefore true) reports, given the requisite recurrence, engender knowledge while nonempirically based (and therefore untrue) reports, given the same degree of recurrence, do not—that one must simply accept as a given. We are aware, through introspection, of our knowledge of the truth of reports such as "the Muslims fought the Quraysh of Mecca at the Battle of Badr." That this knowledge arises from our recurrent hearing of the report is a simple fact of God's creation.

Āmidī reviews the arguments on both sides of this controversy and concludes that neither side can put forward a conclusive case for its position. His method is to show that both positions can be defended to some extent against the objections of its critics, which means that neither side has been conclusively refuted. This leaves the central issue unresolved. Yet, despite this appearance of neutrality on Āmidī's part, there are indications in his discussion of the issue that he leans toward the view of the majority.

Among the objections to the view that the knowledge occasioned by *mutawātir* reports is deduced from premises are the following. First, children who have never been in Mecca know that reports of the existence of Mecca are true; yet they are not sufficiently mature to engage in discursive

reasoning. Second, if the knowledge that reports of Mecca's existence are true is deduced, we should then expect at least some—those who have not engaged in the requisite reasoning—to doubt these reports, and we should expect that some disagreement would arise as to whether Mecca exists or not; but there is no such doubt or disagreement.

Against these objections and others like them Āmidī raises the point that they apply only to knowledge that is deduced from premises that are themselves deduced from premises, not necessarily to knowledge that is deduced from self-evident premises or premises grounded in sensory perception. The latter kind of knowledge, he maintains, involves a primitive or elemental type of reasoning of which children are capable, which admits of no doubt or disagreement.

Āmidī seems to deny in what follows that the reasoning that is proposed as the basis of the knowledge of the truth of reports is as simple as this argument suggests. However, he prefers to concentrate upon another problem with the view that the knowledge in question is deduced. No matter how primitive or elemental the reasoning in a given case may be, there must always be premises: no premises, no reasoning. In the case at hand, what is the premise or premises? The crucial premise, we have noted, is that a large group cannot possibly concur on a false report. From this premise one reasons that whatever a large group reports concurrently is true. But how is the basic premise to be proven? It is certainly not self-evident. An approach that Āmidī considers involves the following argument. Falsification requires a motive; a large group cannot all be subject to the same motive; therefore a large group cannot concur on a false report. Āmidī has not constructed the argument in this fashion, but this construction is clearly assumed in his discussion.

Are the premises of this argument sound? According to Āmidī, both are open to question. First of all, if you say that a large group cannot concur on a false report without a motive, then we can turn the tables and say that a large group cannot concur on a true report without a motive. This argument can be constructed in the following manner: truth-telling requires a motive; a large group cannot all be subject to the same motive; therefore a large group cannot concur on a true report. The argument is, of course, a kind of *reductio ad absurdum*, since no Muslim jurist in his right mind could accept the conclusion. It would mean that no reports of sayings of the Prophet could be accepted as true unless a common motive to report the truth could be discovered; but since this is impossible, there are no true reports of sayings of the Prophet. Now, if one affirms that it is possible for a large group to concur in reporting sayings of the Prophet truthfully without a common motive, then it must also be possible for a large group to concur in the false reporting

of sayings of the Prophet (that is to say, in the fabrication of *ḥadīth* narratives) without a common motive. Thus the claim that false reporting requires a motive is demolished.

But even if we accept the premise that false reporting requires a motive, we are still left with the premise that a large group cannot all be subject to the same motive, which is also open to question. History shows us that large groups in fact have been subject to common motives in the fabrication of reports of sayings of the Prophet Muhammad. It is well known, says Āmidī, that narratives about the Prophet were at certain points in the history of Islam fabricated on a wide scale and for very definite common motives, such as the public good (*maṣlaha*) or the avoidance of public harm (*maḥṣada*). Thus the argument intended to prove that a large group cannot concur on a false report breaks down.

But perhaps there is another way to prove it. We may admit that groups do in fact concur on false reports but insist that it is empirically impossible—impossible within the terms of our experience of the world¹⁹—for false reports to remain in circulation indefinitely. Eventually their falsity will become apparent to all and the reports will be rejected. In other words, it is empirically impossible for a large group to concur on a false report *permanently*. Such a report cannot ultimately survive the test of time. From this we may *infer* that whatever a large group concurs upon permanently must be true. It is by virtue of this simple inference that the knowledge that arises from *mutawātir* reports is to be considered deduced knowledge.

Āmidī responds as follows. Even if we concede that it is empirically impossible for a large group to concur permanently upon a false report, one need not regard this experience-based impossibility as a premise upon which one depends in order to arrive at a knowledge of the truth of a *mutawātir* report, a knowledge that one must say one has *deduced* from this premise. For if one can affirm that it is empirically impossible for a large group to concur permanently upon a false report, one can with equal justice affirm that it is empirically necessary (*al-ʿāda tūjib*) for a large group to concur permanently on a true report. This latter affirmation has just as much claim to be rooted in our experience of the world as the former. The point is that if one can affirm that a large group can concur permanently only upon a true report one has, by virtue of being able to make that affirmation, the knowledge that the report is true. This knowledge is, in other words, built into the affirmation; it is not deduced from it.

As for the view that the knowledge in question is necessary knowledge, here again Āmidī follows his method of showing that this view can be defended against objections brought against it. The objections that he cites

are as follows. First, if this knowledge was necessary, we would be aware that it is necessary, as we are in the case of other instances of necessary knowledge. We are, for example, aware that our knowledge that the sum is greater than its parts is necessary. But the same is not true of knowledge that arises from *mutawātir* reports; therefore, the latter must not belong to the category of necessary knowledge. Second, if this knowledge was necessary, men of reason would not dispute over it, as they in fact do.

Āmidī replies to the first of these objections by insisting that necessary knowledge is independent of the awareness of its necessity. It is possible to have a necessary knowledge of something without knowing that one's knowledge is necessary; the latter knowledge is separate from the former. To the second objection he replies simply that the Sophists dispute over necessary knowledge in general, yet we do not deny that there is such a thing as necessary knowledge.

Although Āmidī declares that the proper position to take with respect to this controversy, the arguments on both sides having been shown to be inconclusive, is one of neutrality or suspension of judgment (*waqf*), anyone who has a hard look at his discussion will find it difficult to resist the impression that he is not absolutely impartial. He does seem to look upon the view that knowledge arising from *mutawātir* reports is deduced as more problematic than the opposite view. In view of the general predominance of the view that such knowledge is necessary among earlier Ashʿarī theologians and the association of the contrary view with two great Muʿtazilī thinkers, al-Kaʿbī and Abu'l-Husayn al-Basrī, it would not be surprising if Āmidī in his heart favored the former view.

The wording of Āmidī's definition of the *mutawātir* report—especially the phrase “yields of its own accord”—as well as the earlier description of it as a report “that is known to be true solely by virtue of the report itself” (*mā yuʿlamu sidquhu bi-mujarradi 'l-khabar*) seems to reflect a leaning toward the standard Ashʿarī view; for if the knowledge that a report is true is the result of a process of deduction from premises, one wonders if one can truly say that the knowledge has arisen solely by virtue of the report as such or that the report yields the knowledge of its own accord. On the other hand, if this constitutes evidence of Āmidī's own leaning toward the standard view of his fellow-schoolmen, we must juxtapose it with the fact that in his discussion of necessary knowledge in the *Abkār al-afkār* he does not include the knowledge arising from *mutawātir* reports in this category. Are we perhaps to see Āmidī as fluctuating in his own thinking about this issue? Could he perhaps have been inclined in one direction when he wrote the *Abkār* and in another direction when he wrote the *Ihkām*?

There is a further problem with the notion that the knowledge of the truth of *mutawātir* reports is deduced that Āmidī raises in another context,²⁰ and that is the problem of number. How many is a “large group,” large enough to rule out the possibility of collusion? If indeed the conditions that govern *tawātūr* are premises from which one deduces the knowledge of the truth of reports, one should have some way of knowing when a group has reached the requisite size. But is it possible to determine exactly when this size has been reached? Many have, according to Āmidī, answered this question in the affirmative, but then have disagreed as to what the required number is. The following numbers were advocated by various parties: 5, 12, 20, 40, 70, and, curiously, 313.

Others, however, have said that the required number cannot be determined; it is known only to God. This is the view that Āmidī regards as the most viable. Here we have another suggestion of a leaning toward the view that the knowledge of the truth of reports is necessary, that it arises directly out of our experience of *hearing*, over and over again, an empirically based report without the intervention of deductive reasoning. For anyone holding this view it was not necessary to know the minimal number of reporters required in order to rule out collusion, for one did not use such knowledge as a basis for deducing the knowledge of the truth of the report; rather, one's knowledge occurred as a direct result of the experience of hearing, and once the knowledge was in hand one concluded that the required number of reporters, *whatever that might be*, had been involved.

This and other conditions governing *tawātūr* were, it must be emphasized, not premises of a syllogism. We may perhaps best regard the conditions as tools of analysis whereby one could better understand *ex post facto* how the knowledge arose. One would be looking in this case at factors outside the mind, not at thought processes. If the knowledge indeed arose as a *direct* consequence of the hearing experience, then the task of determining the number of reporters involved became an impossible one. Are we to attempt, as we hear a report from one reporter after another, to count reporters until we reach the point where knowledge suddenly occurs within us and then to take note of the number of reporters we have heard up to that point? This procedure is out of the question, since it is impossible to determine exactly when knowledge occurs. It is like trying to determine the point at which one becomes a mature, rational adult. Besides, the number of reporters leading to the occurrence of knowledge may vary with circumstances. Thus the crucial number is beyond human determination. Since proposed numbers have ranged from five on up, Āmidī suggests that there is a consensus to the effect that the required number cannot be less than five. Thus any number above

four may or may not be the requisite number in a given case. (Five would hardly seem to constitute a large group, although Āmidī does frequently speak only of “a group,” *jamāʿa*.)

Before leaving aside the subject of the *mutawātir* report, we should take note of a concept that is closely related to it and is perhaps just as important in the final analysis for Muslim thought, despite the surprising brevity of Āmidī’s discussion of it.²¹ That is the concept of what may be called the *mutawātir* meaning. The central preoccupation in Āmidī’s discussion of the *mutawātir* report is with texts; the *mutawātir* report is a vehicle for the accurate reconstitution of texts over time and across generations, a guarantor of a text’s accuracy and authenticity. But, as we have noted, Muslim jurists were hard put to give examples of texts other than the Qur’anic text that enjoyed the support of *mutawātir* reporting. One is inclined to think that *as far as texts were concerned* the concept of the *mutawātir* report had primary relevance to the Qur’anic text and very little relevance to other kinds of texts. For all practical purposes we may say that texts other than the Qur’ān were considered to be grounded in the other category of reports that we shall be considering, known in Arabic as *khavar al-wāhid*, “the report of the individual,” the nature of which I shall explain presently. In the view of the majority of the Muslim jurists, the report of the individual did not provide complete assurance of the accuracy of a text.

The *mutawātir* meaning was a meaning common to a group of reports that differed in respect to language employed but could be regarded as satisfying the conditions of *tawātur* in respect to the common meaning. An example of this is to be found in the reports of sayings of the Prophet that are used to establish the immunity of the *Ijmāʿ* against error. If the reader refers back to those sayings, he or she will find that they do differ considerably in their wording. If one considers each in terms of wording alone, one must regard each as different from the others. Though they differ in respect to only one word, the two sayings “My community will not agree upon an error [*khataʾ*]” and “My community will not agree upon a deviation [*dalāla*],” are by virtue of this small difference two distinct sayings and must *as texts* be treated separately. This means that as texts they each must be regarded as falling in the category of the report of the individual. Considered in respect to their meaning, however, they may be treated as essentially the same, provided, of course, that the process of interpretation of the two texts yields a central common meaning. If we suppose that the common meaning is that the *Ijmāʿ* of the community is protected against error (or deviation, the two terms being rendered interchangeable by interpretation) and if we are able to extract this same meaning from all the other sayings of the Prophet that are cited in

discussions of the authority of the Ijmā^c and if we, further, take Āmidī's word for it that there are countless other sayings like the ones cited, then we shall have enough differently worded sayings with a common meaning to regard the meaning as *mutawātir*.

We are here beyond the level of actual texts. The interpreter through his extraction of a common meaning constructs a text such as "the consensus of the Muslim community is protected against error," but this text is not accorded the appellation of *matn* by Muslim jurists, for it does not represent the actual words of an authoritative figure. It may therefore perhaps be regarded as a supratext, a statement of a common meaning that has been lifted out of a mass of verbally distinct texts. It is authentic in the sense of being an accurate representation of an intent of an authoritative figure. The accuracy is fully assured by the *tawātūr* principle. All the reporters, though employing different words, have conveyed an intent of the authoritative figure of which they were aware from their having *heard* the authoritative figure speak; their number is such as to rule out collusion; and the hearing-speaking connection has been maintained by this same requisite number from generation to generation.

One gathers that, with respect to texts other than the Qur'ān, the concept of the *mutawātir* meaning played a far greater role than the concept of the *mutawātir* report. The use of this concept in the argument for the authority of the Ijmā^c is an important case in point. But the concept appears periodically throughout the *Ihkām* and also at times in the *Abkār*; it could be useful both in theoretical jurisprudence and in theology. Not only could the Prophet's essential thoughts be determined with confidence; through it, certainty about the major events in the Prophet's life and in the early history of Islam, Islam's sacred history, became possible. The Qur'ānic text could thereby be placed within a solidly established historical frame. This is not to say that the concept of *mutawātir* meaning was employed liberally or casually. For the most part both the Sunnaic and Ijmā^cic texts (sparse and unassembled as the latter were) were subsumed under the heading "the report of the individual" in respect to both words and meaning.

Turning to the report of the individual (*khbar al-wāhid*), Āmidī defines it as "a report that falls short of the definition of a *mutawātir* report."²² One may thus, following Āmidī's definition, describe the report of the individual simply as a non-*mutawātir* report. This category covers a large territory. It is not limited to the report that is related by *only* one person, as the expression "report of the individual" may seem to suggest. In fact, a report that is related by a large group but does not satisfy all the "conditions of *tawātūr*" technically falls in this category. However, such a report has little if any relevance for

Islamic theoretical jurisprudence. The most important subcategories within the larger category of report of the individual are reports that are known to be true by virtue of an extraneous factor such as miraculous attestation and reports that are held to be probably true. Of these two subcategories, it is the latter alone that has relevance for the discussion of the transmission of texts, and it is this subcategory that the Muslim jurists usually have in mind when the report of the individual is under discussion. Since the trustworthiness of the reporter is the basis on which a report is held to be probably (as opposed to certainly) true, “report of the individual” becomes synonymous in most discussions with “report of the trustworthy individual.” I shall therefore in the following pages use the latter phrase.

Whereas in the case of the *mutawātir* report the trustworthiness of the reporter is of no consequence—and for that reason most Muslim jurists rejected trustworthiness as a condition of *tawātur*, as we have just seen—in the case of the report of the trustworthy individual this trustworthiness makes all the difference; it operates, not as a condition whereby the report yields of its own accord the knowledge that it is true, but as a *ground* for holding the opinion that it is true, for regarding it as probably true. Unlike the conditions of *tawātur*, trustworthiness is a factor that one must take into account as one consciously deliberates over whether the report is true.

The distinction I introduced earlier between a quintessential report (e.g., “The Prophet said such-and-such”) and an individualized, expanded report (e.g., “I heard the Prophet say such-and-such” or “I heard so-and-so say that he heard the Prophet say such-and-such”) here takes on special relevance. In the case of the *mutawātir* report the individualized, expanded version of a report is expendable, since it is not required in order for the quintessential report to yield the knowledge that it is true. The actual transmission process may, in other words, be forgotten. I have suggested that individuals, upon hearing a *mutawātir* report, are capable of saying, “I have heard from a great many people that so-and-so said such-and-such.” This sort of expansion upon the quintessential report (“so-and-so said such-and-such”) is vague and anonymous, and it contributes nothing to the hearer’s conviction that the quintessential report is true. It is quite dispensable and for this reason is seldom actually verbalized. The quintessential report carries its own weight. In the case of the report of the trustworthy individual, this is not so. The expansion into an individualized report such as “I heard A say that he heard B say that he heard C say that he heard D say that he heard the Prophet say such-and-such” provides the vital information that enables the hearer to deliberate over whether the report is true: it tells him who the reporters who have

transmitted this report are so that he may know whether the reporters were all trustworthy persons.

It is because each individual in the chain of transmission is a vital link whose character as a person is crucial to the deliberative process that the report is called "report of the individual," even though in fact more than one individual is involved in the transmission of the report. The hearer is always receiving the report from a single individual behind whom stands a previous individual, and behind him another, and so on. One may, of course, receive one and the same report from several individuals behind each of whom is a transmission chain of individuals, but so long as the transmission process falls short of the requisites of *tawātur* one is still working with reports that fall under the heading of the report of the individual. One report may corroborate another, but this corroboration does not constitute *tawātur*. One still takes the trustworthiness of individuals into account and settles for the probable as opposed to certain truth of the report.

I have already indicated that, according to Āmidī, some Muslim jurists tried to raise the report of the trustworthy individual to the level of the report that is known to be true through an extraneous factor, in this case trustworthiness. Āmidī is therefore compelled to take up as his first task after the business of definition has been completed the examination of the debate between these jurists and those who adopted the opposing view.²³

It no doubt seemed reasonable to those who wished to accord higher status to the report of the trustworthy individual that trustworthiness should be included among the things by which a report could be known to be true. One might acknowledge that the trustworthiness of a human being was not in the same rank as miraculous signs of a prophet's truth-telling or a consensus of the community while still being convinced that a man's reputation could be a sufficient basis for certainty that he would never tell other than the truth. In order to understand this attitude we must take into account the extraordinarily superlative assessment of character that was entailed in the concept of trustworthiness in the thinking of the medieval Muslims, particularly when this concept was applied to the early generations of Muslims, those believed to have been responsible for the transmission of the basic texts until the time of the great written compilations. The process of screening *ḥadīth* narratives that led to the great compilations focused entirely upon the trustworthiness of the transmitters as the criterion for accepting or rejecting narratives, and the *ḥadīth* specialists who engaged in this screening went to enormous lengths to determine which among the known transmitters possessed this quality and which did not. The original witnesses to the sayings, acts, and

endorsements of the Prophet—his Companions—were generally believed all to have been trustworthy without exception.

We must consider the implications that the notion that trustworthiness guarantees the truth of reports had for the compilations that emerged out of the screening process. If one acknowledged the universal trustworthiness of the Companions, then one could claim to know without any shred of doubt that any report of a Companion was true. If one could then establish that all those who transmitted a report of a Companion up to the present time were trustworthy, one could claim to know without any shred of doubt that the report in its extant form was true. Once one could make this latter claim, one had a text whose authenticity was every bit as sure as that of the Qurʾān. One could in principle have *hadīth* compilations that were on a par with the Qurʾānic text in respect to their authenticity.

While not all *hadīth* specialists, apparently, were willing to make such an extravagant claim concerning the written compilations, the aspiration to achieve nothing less than full certainty about the truth of transmitted reports was clearly widespread among them. This aspiration had its roots in the “search for knowledge” (*talab al-ʿilm*) that had given birth to the *hadīth* movement in the first place. This search entailed a deliberate avoidance of all speculation, and there is reason for believing that many within the *hadīth* movement felt an antipathy toward mere opinion. What was at stake in their endeavors was knowledge of the Sunna, as distinct from knowledge of the Qurʾān; opinion as to what constituted the Sunna would not do. Since the principle undergirding the knowledge of the Qurʾān, namely, the *tawātur* principle, did not seem to bear much fruit when applied to the Sunna, the trustworthiness of individual reporters remained the sole avenue to knowledge of the Sunna.

The insistence of some *hadīth* specialists upon knowledge of the Sunna as the only acceptable desideratum of *hadīth* scholarship ran counter to the equally strong insistence of many Muslim jurists upon the acceptability of opinion as to what constitutes Sunna. We encounter here the same division of Muslim scholars into a rigorous camp and a liberal camp as was evident in Āmidī’s discussions of Ijmāʿ-related issues. There the rigorous camp insisted that the Ijmāʿ cannot function as an authoritative indicator of the divine law unless its authority rests upon a sure foundation of knowledge and unless the occurrence of each particular Ijmāʿic consensus can be established with full certainty, while the liberal camp allowed opinion to replace knowledge in these matters. Here the rigorous camp is insisting that in order for the Sunna to function as an authoritative indicator of the divine law each datum of the Sunna—each saying, act, and endorsement of

the Prophet—must likewise rest upon a sure foundation of knowledge, while the liberal camp is allowing such data to rest upon opinion. The central issue between the two camps is whether or not opinion may enter into the shaping of the human understanding (*fiqh*) of the divine law. The rigorous camp equates *fiqh* with hard knowledge and displays a general bias against opinion; the liberal camp allows *fiqh* to include, in the absence of knowledge, the opinions that mujtahids arrive at as a result of their individual deliberations. In order to extend the scope of what may be considered knowledge, the rigorous camp is, it seems, on the whole less demanding in its methodology than the liberal camp, which is driven to accept opinion out of an awareness of the difficulties entailed in the pursuit of knowledge.

Among those who maintain that the report of the trustworthy individual yields the knowledge that it is true Āmidī includes, not surprisingly, Ahmad ibn Hanbal, “certain Zāhirīs,” and “certain *hadīth* specialists.” Ahmad ibn Hanbal and the Zāhirīs, he tells us, considered all reports in this category as yielding such knowledge, whereas the *hadīth* specialists considered only some such reports as yielding this knowledge.

Āmidī predictably champions the opposing opinion. If we say that the report of the trustworthy individual yields the knowledge that it is true, then, he argues, we must conclude from the known contradictions between reports of trustworthy individuals that truth is sometimes self-contradictory, which is absurd. Furthermore, as we listen to the reports of trustworthy individuals one after the other, we find that our sense that what they are reporting is true increases; but knowledge is not capable of such increase, but only opinion. Still further, if the report of a trustworthy individual yielded the knowledge of its truth, there would be no need for a miraculous sign to attest the truth of the Prophet’s report that he heard the Qur’ān upon the tongue of the Angel Gabriel; since the Prophet was clearly a trustworthy person, all his reports stand as true quite apart from any divine attestation. But this is heresy. Finally, another absurdity would follow. We would have to regard every mujtahid who on the basis of considered opinion takes exception to the truth of the report as having committed an error, or even an iniquity or innovation, which is contrary to the known practice among mujtahids.

But what of the Qur’ānic verses (6:117, 10:37, 17:36) that explicitly denounce adherence to mere opinion? Do they not show that the reports of trustworthy individuals, if they are to be used at all in the determination of the divine law (as the consensus requires that they be, as we shall see shortly), must be regarded as yielding knowledge of their truth? And if the reports of trustworthy individuals do not yield such knowledge, how are we to account for the fact that a murderer may be put to death on the basis of the testimony

of two witnesses? Āmidī replies that, first of all, the Qur’ānic verses in question can be interpreted as referring to opinion in regard to the basic articles of faith, not to opinion in regard to rules of law and, second, that the decision of a judge regarding a murder—or any other judicial decision—may, according to a consensus, be based on considered opinion.

But if the trustworthiness of an individual is not by itself sufficient to give rise to the knowledge (as opposed to the opinion) that his report is true, is it possible for this knowledge to arise from some other factor that exists alongside the trustworthiness? Āmidī proceeds to consider five factors that various jurists have proposed in answer to this question: (1) circumstances surrounding the report, (2) silence of the Prophet with respect to the report, (3) silence on the part of a large group with respect to the report, (4) community-wide behavior that is in conformity with the report, and (5) the satisfaction of other witnesses with the report.

Āmidī accepts the idea that the report of a trustworthy individual may be known to be true from circumstantial evidence of its truth. Let us suppose, he says, that we hear someone say, “The king’s son has died.” We then recall that the king’s son was ill and that no one else in the king’s household was ill. At the same time we hear shrieks and wailing from the king’s palace, see a funeral procession coming out accompanied by servants and maidens in mourning, and finally observe the king himself with torn clothes, bareheaded, slapping his face. Every rational person who hears the report, “The king’s son has died,” and witnesses these events will be as convinced of the truth of the report as he would be if the report was *mutawātir*. One wonders what bearing Āmidī’s argument has upon reports of the sort that a mujtahid would be concerned with. A report by a Companion of, say, a saying of the Prophet would possibly gain strength in the minds of other Companions by virtue of such circumstantial evidence, but subsequent generations would face the disadvantage of not having been witnesses to the evidence. If they were to seek evidence from the reports of witnesses, then they would have to face the problem of how to verify those reports before they could attempt to verify the original report. Quite possibly, the Muslim jurists did consider the carrying out of these tasks to be feasible, if not common. We can well imagine the difficulties a later compiler of *hadīth* material such as Bukhārī would face in attempting to verify a report of an individual in this way.

But what if a trustworthy individual reported a saying or act of the Prophet in the Prophet’s presence and the Prophet did not speak up to contradict the report?²⁴ Could we not in this case claim to know that the report is true? This line of thinking seems to assume that we have a *mutawātir* report of the incident in question, since only if we know that the Prophet did not deny the

report of his saying or act can we hope to know from his nondenial that the report is true. Āmidī does not bother with this assumption but attacks the issue of whether we can infer the truth of the report from the Prophet's nondenial. He argues that we cannot and suggests a variety of explanations for the Prophet's nondenial of the report that do not entail confirmation of the report.

But what of the silence of a large group in the face of the report?²⁵ Can we not argue that if the report was false surely some within a large group would have been aware of its falsity and would have spoken up? Does the silence not, then, give us the assurance that the report is true? No, says Āmidī, for it is possible that the entire group failed to heed what the reporter said or did not know whether the report was true or false. Furthermore, we must allow for the possibility that some knew it was untrue but deliberately held back this information.

Those who regarded community-wide behavior as attesting the truth of a report were, of course, seeking to give the report the backing of the Ijmā^c,²⁶ for any act that becomes universal within the Muslim community is, as we have earlier observed, expressive of an Ijmā^cic consensus. It is important to understand, however, that the act under consideration is an act that *happens* to conform to the report, not an act that entails conscious conformity with the report. If it could be established that all members of the community performed the act on account of the report, this would presumably give rise to the knowledge that the report is true. Āmidī deliberately speaks of the act as being in conformity with the import (*muqtadā*) of the report, that is to say, with a rule of law embedded within the sense of the report; he does not speak of it as conforming to the report as such. He is therefore able to pose the objection that it is possible that the community was acting, not in conformity with the report, but in conformity with some other indicator of the rule of law. In other words, the fact that the community's behavior conforms with the rule embedded within the sense of a particular report does not mean that it is necessarily basing its behavior on the report, thus confirming its truth, since it may have been aware of the rule from some other indicator.

The notion of satisfaction of other witnesses with a report requires explanation.²⁷ According to Āmidī, the Shī'īs argued that if an individual reports that a certain event of major importance (the Prophet's designation of ʿAlī as Imām is the obvious case in point) took place within a public setting in which a large number of people would inevitably have witnessed it but there are no corroborative reports from other witnesses we still have grounds for claiming to know that the report is true; for when one individual reports such an event he fulfills on behalf of all the other witnesses the need to transmit the information to those who were not witnesses, including all of posterity.

The silence of the other witnesses is thus a token of their satisfaction with his report. Āmidī quite naturally rejects this way of thinking, as do the majority of Muslim jurists. He is convinced that God has implanted in the very nature of human groups an impulse to talk about what they know and experience and that it is impossible therefore, within the structure of the world as we experience it, that all witnesses but one or a few would remain silent, leaving the task of conveying the information to others to the one or few.

Āmidī thus has demolished all attempts save one to raise the status of the report of the trustworthy individual to the level of reports that are known to be true. The one he does not demolish—which entails consideration of circumstances surrounding the report—in any case hardly seems to have a bearing on the vast majority of the reports that Muslim scholarship classified under the heading of the report of the trustworthy individual. For the most part, reports of trustworthy individuals do not, in Āmidī's view as in the view of the majority of Muslim jurists, fall within the category of reports that are known to be true. If the reporters are trustworthy people, we may claim at most only to be *of the opinion* that they are true, to have the sense that their truth is probable. If they are not trustworthy, we may not claim this.

For Āmidī and all who shared his viewpoint, the exclusion of the report of the trustworthy individual from the category of reports that are known to be true was not disastrous for the jurisprudential enterprise, for that enterprise could manage perfectly well so long as it was possible to form opinions concerning the truth of reports. To repeat a fundamental point dear to Āmidī: while knowledge of the basic tenets of Islam was required as a foundation for the jurisprudential enterprise, opinion could often be decisive in the actual working out of the law, that is to say, in the actual formulation or articulation of rules of law. If one could not be absolutely sure of the truth of a report of a saying or act of the Prophet or a saying or act of another that gave expression to an Ijmā'ic consensus, then one could and should proceed on the basis of the probable truth of the report, if probability could be determined. This openness to opinion enhanced the role of *ijtihād*, the striving for sound opinion, in the development of the law.

The acceptability of reports of trustworthy individuals as a basis for the formulation of the law was by no means universally acknowledged among the medieval Muslims, and those who did acknowledge it—the majority—had to defend their point of view against those who did not. The central issue in the debate was whether or not a report of a trustworthy individual constitutes an authoritative indicator of the divine law. The authority, or indicator-status, of a report is, of course, inseparable from the authority, or indicator-status, of that which it reports. The medieval Muslims agreed unanimously that the

sayings, acts, and endorsements of the Prophet that emerged out of his experience of hearing the divine speech—which constituted the Sunna—carried authority, and there was widespread, though not unanimous, agreement that the sayings, acts, and endorsements of mujtahids that gave expression to an Ijmā'ic consensus carried authority.

Here the focus is upon the instrument whereby these sayings, acts, and endorsements are continually held before the community, namely, the report. In debating whether the report of the trustworthy individual is an authoritative indicator of the divine law, the medieval Muslims were really debating, in effect, whether such a report is an authoritative representation of the Sunna or the Ijmā', although the actual debate is more interested in the Sunna than in the Ijmā'. The determination of an Ijmā'ic consensus on the basis of information about sayings, acts, and endorsements of mujtahids or others was fraught with problems that have been touched on earlier. Here we shall, in deference to the Muslim dialecticians themselves, confine our attention to reports as representations of the Sunna. The issue of whether the report of a trustworthy individual is an authoritative representation of the Sunna is quite independent of the issue of whether such a report is known to be true or only held to be true as a matter of opinion. Needless to say, if a report was known to be true, it would constitute an authoritative representation of the Sunna; but whether it could be known to be true was itself an issue of central importance, as we have seen. One gathers that the debate over whether a report of a trustworthy individual constituted an authoritative representation of the Sunna presupposes that such a report is not in the category of reports that are known to be true; one gathers, in other words, that the debate is over whether a report whose truth is only probable, or opinion-based, can be regarded as an authoritative representation of the Sunna. We are, incidentally, here concerned with the report as an isolated entity, not as a bearer of meaning shared with other reports numerous enough to warrant considering the meaning to be *mutawātir*.

The implications of this debate for Islamic thought must not be allowed to go unnoticed. If we bear in mind that the category of the report of the trustworthy individual embraced virtually the whole of the great compilations of Sunnaic *hadīth* material, we shall readily see that what was at stake in this debate was their authority. The compilations, let us remember, were the result of a sustained process of sorting through a great mass of *hadīth* material, most of which was openly acknowledged by those involved in this process to be spurious or at least weak. The spectrum of attitudes toward the mass of *hadīth* material varied from extreme skepticism to uncritical acceptance of the greater part. The compilation movement attempted to steer

a course between these extremes and thereby salvage the concept of an embodiment of the Sunna in a textual corpus. It relied heavily, in its screening of *hadīth* material, on the criterion of trustworthiness. Some, as we have noted, felt that the text-critical procedures that employed this criterion warranted a claim to a “knowledge” that the results were absolutely reliable. Others were more cautious. It was the cautious who were drawn to the principle, untiringly defended by Āmidī throughout the *Ihkām*, that opinion was an adequate basis upon which to formulate the law. It was this attitude, apparently, that had gained ascendancy by Āmidī’s time and would reign supreme thereafter. But it had to contend, probably during the stage when the Sunnaic compilations were in the making, with the extreme skepticism that had hounded the *hadīth* movement since its very inception.

From Āmidī’s account of the debate over the authority, or indicator-status, of the report of the trustworthy individual we learn that the opponents of this principle adopted two different approaches:²⁸ some maintained that the principle was untenable on purely rational grounds, while others acknowledged its rational tenability but denied its actual validity. Āmidī includes among those who adopted the first approach the famous Mu‘tazilī theologian Jubbā’ī and “a party of speculative theologians.” He does not identify the latter as either Mu‘tazilī or Ash‘arī, though one suspects that he had Mu‘tazilis in mind. The name of Jubbā’ī establishes a sure connection with Mu‘tazilī circles. This is not surprising, since criticism of the *hadīth* movement existed among the Mu‘tazilis.

The rationalist attack against the authority of the report of the trustworthy individual focused on its susceptibility to error. A trustworthy individual, however pure his intentions, was not infallible; he could make mistakes. The advocates of the report of the trustworthy individual freely admitted this, claiming nothing more than that trustworthiness warranted a bias in favor of truth as more likely than falsity. This conscious reliance on opinion as opposed to hard knowledge in the matter of the truth of reports was a sort of Achilles’ heel that the rationalist stratagem sought to take advantage of. If one has only an opinion that a report is true, one must admit that there is at least a possibility that the report is in actual fact false; and if one treats as authoritative a report that is subject to the possibility, however slight, that it is false, one must acknowledge the possibility that one is setting up a false report as authoritative. This creates a problem to which the Mu‘tazilis in particular were sensitive. If we assume that the duties that God revealed to the Prophet Muhammad were of necessity designed to promote the welfare of the creature, then if a trustworthy individual reported that the Prophet said something he did not in fact say—for example, that

certain forbidden goods are lawful—and we treat his report as authoritative, basing our understanding of the divine law on it and living in accordance with that understanding, we are preventing the primary purpose of the law from being realized; in fact, harm to ourselves, rather than our welfare, will occur. What this argument has attempted to establish is a *logical* contradiction between the idea of the authority of fallible reports and the idea of welfare as a *necessary purpose* behind the law. Āmidī demolishes the argument by reminding the reader that he has, in his theological writings, refuted the notion that there are necessary purposes underlying the law of God. Since Āmidī does later speak of purposes behind the law, we must understand here that what he is ruling out are purposes that God necessarily fulfills, not purposes that he freely wills to fulfill.

Among the other arguments in the arsenal of those who reject the authority of the report of the trustworthy individual on rational grounds is one that draws attention to the contradictions that may exist between reports of this sort, contradictions that the advocates of these reports unhesitatingly acknowledge. If one report has the Prophet saying, “Do this,” and another report has him saying the opposite, and we treat both reports as authoritative and therefore as binding in what they tell us of the law, we put ourselves in the impossible situation of having to comply with contrary directives in our conduct. Āmidī works his way out of this difficulty by referring to the procedure customarily followed by mujtahids when confronted by contradictory indicators of the law: they sought to determine which of the several contradictory reports enjoyed the greatest probability of truth and then to abide by that report. If they were unable to single out a particular report as more probably true than the others, then they would either choose a report on the basis of personal preference or, if they did not agree with this method, refrain from adhering to any of the reports. This last posture does not invalidate the principle of adherence to reports of trustworthy individuals, for we can take that principle to mean that there is a duty to adhere to such reports only when the reports admit of adherence. Contradictory reports that have an equal probability of truth obviously do not admit of adherence; but they do not constitute the entire body of reports with which mujtahids deal.

Āmidī makes it clear that the authority, or indicator-status, of a report is in no way compromised by its being subject to the possibility that it is false or erroneous. That it is possible (that is, not logically absurd) for such a report to be authoritative in spite of the possibility of falsity or error is evidenced, he points out, from the practice, accepted by everyone, of submitting to the word of a muftī or, in a court, to the word of two witnesses, even when we know that this word is subject to the possibility of being false or in error.

The second approach taken by those who reject the authority of the report of the trustworthy individual—which denies that there is a demonstrable basis for this authority—occasions a much longer disputation than the first approach, twenty-four pages in the 1914 edition of the *Ihkām* as against only seven pages.²⁹ Significantly, the greater part of these twenty-four pages—fourteen, to be exact—is taken up with disputation between *advocates* of the authority of this type of report. The issue between them concerns the type of argument that is most effective in defending that authority against its detractors. Āmidī considers ten arguments that are, in his view, “weak” (*daʿīf*), that is to say, insufficiently effective. Of these five rely entirely on human reasoning, four make use of Qurʾānic passages, while one finds support in the Sunna. The arguments based on the Qurʾānic passages (4:135; 9:122; 16:43; 49:6) entail an exegesis that Āmidī finds to be on the whole too forced to be convincing. I shall not, however, take up space here to consider the complexities of the exegesis and of Āmidī’s criticisms.

The argument from the Sunna bears some comment. A case for the authority of reports of trustworthy individuals could not, of course, be based on such reports. Such a *petitio principii* had to be strictly avoided. Therefore, to the extent that the Sunna could be useful as a basis for argument, it had to be determined on the basis of information that was anchored in *tawātur*. Accordingly, the argument from the Sunna runs as follows. It is by virtue of “*mutawātir* transmission” (*al-naql al-mutawātir*) well known that the Prophet sent individual Companions to different tribes, regions, and countries to invite people to accept Islam, to convey to them information about the Prophet and other matters, including rules of law, to settle controversies, to collect *zakāh*, and so on. Now we know that those to whom these individual Companions were sent were required to render obedience and to accept whatever the Companions reported to them, even though the reports were all reports of individuals, not *mutawātir* reports. If the reports of trustworthy individuals did not carry authority, all this would have been impossible. The key term in this argument is “*mutawātir* transmission.” Āmidī does not make it clear whether this translates into *mutawātir* reports or into *mutawātir* information gleaned from a great many non-*mutawātir* reports, although I am inclined to think that he has the latter in mind. As we have noted, there are a great many problems surrounding the idea of a report that is *mutawātir* in respect to the actual words employed, such that the idea of “*mutawātir* meaning,” a meaning common to a great many reports that, individually considered, do not meet the conditions required of a *mutawātir* report, proved to be much more useful in attempting to establish facts remote in time or space from one’s own experience.

Āmidī faults this argument on two grounds. First, even if we acknowledge that the Prophet sent out individual Companions to do the things mentioned in the argument, this does not mean that their reports to the people were of the sort that serve as probable indicators of the law. It is precisely that sort of report that is at issue. Second, even if we were to admit that the reports of the Companions were of this sort, we still have no reason to conclude that the reports were treated as authoritative indicators in their own right, for it is possible that each report was used in conjunction with a great many other reports so as to determine meanings that were sufficiently widespread to be regarded as *mutawātir* meanings.

The inescapable conclusion of Āmidī's survey of the various rational arguments and the arguments from the Qur'ān and Sunna is that no arguments of these types suffice to establish the authority of the report of the trustworthy individual. Only one type of argument remained to be considered, an argument from the Ijmā'. It is on this type that Āmidī rests his own case for the authority of the report of the trustworthy individual. The Ijmā' he turns to, as is typically the case in the *Ihkām*, is that of the Companions of the Prophet, an Ijmā' that, we soon discover, falls under the heading of the tacit Ijmā' (*al-ijmā' al-sukūti*). There are, he says, "innumerable instances" (*al-waqā'i' al-khārija 'an al-'add wa'l-hasr*) in which various Companions treated reports of trustworthy individuals as authoritative and none of their contemporaries objected to this procedure, thus indicating by their silence their consent to it. He cites fourteen specific examples, among which are the following:

1. Abu Bakr, in the matter of the inheritance of the grandmother, adhered to (*'amala bi-*; that is, treated as authoritative) a report of Mughīra according to which the Prophet had said she should expect a sixth of the inheritable estate.

2. 'Umar, in deliberating on the question of whether poll-tax should be demanded of Mazdaeans, adhered to a report of 'Abd al-Rahmān to the effect that the Prophet had said, "Deal with them as you deal with the People of the Book."

3. 'Umar, in deliberating over the matter of the unborn child, adhered to a report of Ibn Mālik according to which he had said to the Prophet, "I was with my two wives [*al-darratān*: wives other than the first wife] when one struck the other and the one hit expelled a dead foetus," and the Prophet declared that the compensation for the slain foetus should be a choice slave. 'Umar in fact said, "Had I not heard this, I would have decided differently."

4. 'Umar, on the question of whether a woman was to receive, as an inheritance, a portion of any blood-money paid for the life of her husband, adhered to a report of al-Dahhāk ibn Sufyān to the effect that the Prophet had written

to him saying that he should award the wife of Ashyam al-Dibābī an inheritance from the blood-money paid for his life.

5. ‘Umar, on the question of how much indemnity was to be paid for the loss of fingers, was calculating different amounts for the different fingers when he heard a report from ‘Amr ibn Hazm to the effect that the Prophet had said that the indemnity should be the same for all five fingers. He immediately adhered to the report.

6. Both ‘Umar and ‘Alī, in deliberating over the matter of the waiting period required before remarriage in the case of a woman whose previous husband had died in his house, adhered to a report of Furay‘a bint Mālik that stated, “I came to the Prophet after my husband’s death and asked to be excused from the waiting period, and he said, ‘Tarry until your waiting period has come to an end.’”

7. ‘Alī once said, “When I heard something directly from the Prophet, it was a blessing from God according to His will; if someone else related something to me about the Prophet, I made him take an oath, and when he had taken the oath, I accepted what he said as true.”

8. Ibn ‘Abbās, after having held the view that only a sale involving delayed payment for goods received should be judged usurious, adhered to a report of Abū Sa‘īd al-Khadrī stating that the Prophet had pronounced exchanges of unequal monetary values to be usurious.

9. Zayd ibn Thābit adhered to a report of a Muslim woman of Medina to the effect that a woman beginning to menstruate should retire promptly without bidding farewell.

10. Anas ibn Mālik once said, “I was serving Abū Talha and Abū ‘Ubayda a drink when an individual came to us and said, ‘Wine has been forbidden,’ whereupon Abū Talha said, ‘O Anas, rise up and break that vessel.’ So I rose to get a mallet and struck the lower part of the vessel so that it broke.”

Such examples, says Āmidī, could be multiplied indefinitely. All of these instances, he argues, were well known among the Companions, yet no Companion ever objected to any one of them. When we turn to the following generation, we find the very same thing: the adherence of well-known Muslims (Āmidī mentions eleven names as examples) to reports of trustworthy individuals without any objection from anyone. The same is true of the great jurists of the two Holy Cities and of Basra and Kūfa. It was true of all generations of Muslims until the first opponents of this practice appeared.

But is not all the information just recounted itself based on reports of individuals? How can the authority of reports of individuals be based on information that is itself derived from such reports? Is there not here a *petitio principii*? Āmidī responds: there are so many such reports that the

essential information that they all convey—that Muslims in the early generations regarded the report of the trustworthy individual as authoritative—may be regarded as constituting *mutawātir* information. But is it not possible that the Companions, in the instances cited, were not adhering specifically to the reports mentioned but were rather adhering to other indicators of the divine law that happened to agree with the reports? No, says Āmidī, this is not possible, since the Companions, had they in fact been adhering to other indicators that were more certain than the reports of individuals, would surely have mentioned those other indicators. It is empirically impossible that they would not have mentioned them. Furthermore, the Companions in certain instances made it clear that they were adhering to the report mentioned. For example, in the third example given above, ‘Umar explicitly declares, “Had I not heard this, I would have decided differently.”

But what do we do with known instances in which certain Companions did object to adherence of other Companions to reports of trustworthy individuals? For example, Abū Bakr rejected the report of Mughīra mentioned in the first of the examples given above until the report of Muhammad ibn Maslama was conjoined with it; ‘Alī rejected the report of Abū Sinān al-Ashja‘ī concerning the woman married without a dowry; and ‘Ā’isha rejected the report of Ibn ‘Umar concerning the tormenting of a deceased person through his family’s wailing for him. Āmidī’s answer to this objection is simple: in all such instances there must have been special reasons why the Companions in question rejected the reports. Perhaps a weightier indicator contradicted the rejected report, or perhaps one of the conditions upon which the authority of reports of individuals rests (to be considered shortly) had not been met. The rejection could not have been due to any belief that reports of trustworthy individuals can have no authority.

But is not adherence to the report of a trustworthy individual tantamount to deferential submission (*taqlid*) to the authority of the individual reporter? How could the Companions, or any other mujtahids, submit deferentially to the authority of an individual reporter? Is not deferential submission improper for mujtahids, being proper only for commoners? (This query entails a point that will be elaborated more fully later.)³⁰ Āmidī, in reply, insists that a mujtahid and a reporter of religiously important information are not equals. A mujtahid, it is true, must not submit deferentially to the opinion of another mujtahid concerning a matter that falls within the sphere of *ijtihād*. This could include a determination as to which of several reports carries the strongest probability of truth; but it cannot include reporting as such. When a mujtahid has determined that a particular report has the highest

probability of truth, then he must submit deferentially to the authority of the individual reporter *qua* reporter.

While Āmidī has an answer for every question concerning his argument from the Ijmāʿ that he himself cites, he does not claim that the argument establishes the authority of the report of the trustworthy individual with absolute certainty. To the contrary, he ends his discussion with the following highly significant summary statement: “To argue from the Ijmāʿ in regard to this issue is to adopt a method of argumentation that is among the methods that lead [not to knowledge but] to opinion, although the method of argument from the Ijmāʿ is [in this case] more convincing than the other methods that have been mentioned [that is, the methods of appeal to the Qurʾān and the Sunna.] Accordingly, one who regards the issue before us as an issue that admits only of a conclusive resolution will find it difficult to take a position either for or against [the authority of the report of the trustworthy individual], since there is no absolutely decisive argument that one can rely on. As for those who regard the issue before us as admitting of a probable, or opinion-based, resolution, let them adopt whichever they wish of the above-mentioned methods of argumentation.” If we recall from Āmidī’s earlier discussion of the tacit Ijmāʿ all the problems entailed in the determination of an Ijmāʿic consensus of this type,³¹ we can well appreciate why Āmidī is reluctant to claim absolute finality for his appeal to a tacit consensus in this case. But even if a tacit consensus could be determined with complete certainty, its authority—like that of any Ijmāʿic consensus—would, let us recall, itself rest upon opinion, albeit, as Āmidī has told us, “an opinion so strong as to border on certainty.”³²

We can detect in Āmidī’s remarks an implicit stacking up of opinion upon opinion. No authority in Islam, other than that of God, can be self-constitutive. Therefore, if appeal is to be made to any authority other than God’s, that other authority must be shown to have a basis either in divine revelation or in something that derives authority from divine revelation. Āmidī’s argument in regard to the authority of the report of the trustworthy individual is that it derives, not directly from divine revelation (whether in the form of the Qurʾān or of the Sunna), but from something whose authority does derive from divine revelation, namely, the Ijmāʿ. The authority of the report of the trustworthy individual is thus two steps removed from the ultimate source of all authority. But the grounding of the authority of the Ijmāʿ in Qurʾānic and Sunnaic texts is, we have observed, a probable, or opinion-based, grounding, not an absolutely certain grounding. To be sure, Āmidī characterizes the opinion that the Ijmāʿ is authoritative as “so strong as to border on certainty.” On the other hand, as we have seen, much more is entailed in an argument from the Ijmāʿ

than the authority of the *Ijmāʿ*. One must establish that an *Ijmāʿ*ic consensus on a particular matter under consideration really existed. This task, especially when the search is for a tacit consensus, is fraught with enormous problems and can yield nothing more than opinion. Thus the authority of the report of the trustworthy individuals rests upon a foundation that is itself built upon opinion and must consequently be regarded as opinion-based. Āmidī makes it very clear throughout the *Ihkām* that whatever is built upon opinion is itself opinion.

But having erected this opinion-based authority of the report of the trustworthy individual, what does one have? One has, first of all, an opinion—nothing more—as to what the Prophet said or did on this or that occasion; second, one has, after having undertaken the interpretative tasks to be considered in a later chapter, an opinion as to what the Prophet meant by what he said or did, that is to say, an opinion as to what rule of law is indicated by the Prophet's saying or deed. This stacking up of opinion would seem to suggest that the higher the position of the opinion in the stack the weaker it would be. Āmidī does not actually say that, but this does not really matter since an opinion need not reach optimal strength in order to be decisive in the formulation of the law. Any opinion, however weak, entails *some* sense of a thing's probability; any opinion, that is to say, tips the scale in favor of one of two (or several) possibilities. Nothing more than this tipping of the scale is needed for the purpose of formulating the law, although a strong opinion will always take precedence over a weak opinion.

The remainder of Āmidī's discussion of the report of the trustworthy individual is taken up with three general topics: the procedures entailed in the determination of the trustworthiness of an individual reporter, the modalities of the process of transmission of a report from one individual to another, and the various factors that may fault a report of a trustworthy individual (but not the individual himself) such that the report should be rejected.

The first of these topics takes us into the part of medieval Muslim *hadith*-criticism that was concerned with the evaluation of the character of persons known to have transmitted *hadith* material, an enterprise he blazes known in Arabic as *al-jarh wa'l-ta'dīl*. As is well known, the Muslim text critics focused entirely on the process of transmission of texts, being reluctant to evaluate a text's authenticity on the basis of considerations intrinsic to the text itself. To question a text's authenticity because of an anachronism or a clear connection with a development subsequent to the time of the text's presumed origin seemed to amount to setting limits on the possibilities open to divine revelation. Among the things connected with the transmission process that were to be looked at carefully—more so, in fact, than any other thing—was the

character of the reporters. *Al-jarh*, “injuring,” is the assessment of a reporter’s character as untrustworthy, *al-ta’dīl*, “declaring trustworthy,” the assessment of his character as trustworthy. Although the latter was considered to be the basis upon which *hadīth* narratives were included in the great compilations, both were essential aspects of a single screening process, opposite sides of a single coin.

A reporter’s character, it should be noted, was not the only thing pertaining to the reporter that was looked at. Āmidī specifies three other factors: the reporter’s status under the divine law (that is to say, whether or not he was a legally responsible person), his religion, and the strength of his memory.³³ Strictly speaking, these three factors entered just as much as the reporter’s character into the process of forming an opinion as to whether a report was true and determining the degree of probability of its truth. I did not earlier mention them in connection with the subject of reports that are held to be probably true—one of the basic categories of reports laid out by Āmidī in his second classification of reports—since Āmidī himself does not mention them in the passage of the *Ihkām* in which that subject first comes up. There is no doubt that character—trustworthiness or lack of it—was the central preoccupation in the evaluation of reporters. However, we should bear in mind that in order for a report to be accepted as authoritative—because of the probability of its being true—a reporter had to be not only trustworthy but also a legally responsible person (that is to say, not a minor or a mentally incapacitated person), a Muslim, and a person whose memory was sufficiently strong to render reliable remembrance more probable than faulty remembrance or forgetfulness. The reason for the second requirement was that the probability of trustworthiness and absence of its opposite, iniquitousness, was believed to be greater in the case of a Muslim than in the case of a non-Muslim. Religion was thus closely related to character. It did not, however, in itself guarantee trustworthiness, for a Muslim could be untrustworthy.

But how was the trustworthiness of any reporter to be determined?³⁴ According to Āmidī, Abū Hanīfa and his followers held that so long as a person was from all outward appearances a Muslim and free of iniquity his report should be accepted. The phrase “from all outward appearances” (*zāhiran*) takes us back to an earlier discussion in the *Ihkām* of the issue of whether an innovating mujtahid should be included among those whose opinions are to be taken into account in attempting to determine whether an Ijmā’ic consensus exists (or existed) on a particular question.³⁵ There we learned that, for the majority of jurists, a mujtahid should be included among the Ijmā’-makers so long as he gave the appearance of being truthful in claiming to have put forth maximal effort in his scholarly deliberations and that

the appearance of being truthful was largely a function of a mujtahid's standing in society: if he was accepted within the ranks of the mujtahids, he would by virtue of that status give an appearance of being truthful. Even iniquity did not compromise this appearance of truthfulness so long as the mujtahid was unaware of his own iniquity. The point of view attributed in the present discussion to Abū Hanīfa and his followers favored the application of this same criterion to the reporter. In determining whether a mujtahid's "report" about himself should be accepted as true, one did not attempt to look beneath the surface of a person's stature in society. Why should one do so in regard to the reports of individuals concerning religiously important events such as acts and sayings of the Prophet? Why not let trustworthiness be determined entirely on the basis of general reputation? Why probe into something so elusive and inward as a person's character?

Against this liberal approach to the determination of trustworthiness, Shāfiʿī, Ibn Hanbal, and the majority of Muslim scholars after them, says Āmidī, insisted on a much more rigorous approach. One should never accept as true the report of a person whose actual character—his "condition" (*hāl*)—is unknown. Rather, one must have an intimate familiarity (*khibra bātina*) with his character and a firm knowledge of his life's history and one must explore even his innermost thoughts and attitudes; if all this is not possible, one must then rely on the assessment of others whose trustworthiness has itself been subject to the same kind of rigorous review.

Āmidī here takes the side of the rigorous camp. He is not convinced by any of the arguments for the Hanafī position. For example, the argument that the Qur'ānic statement "If an iniquitous person comes to you with any news, verify it" (49:6) indicates that if the person's character is unknown the news need not be verified but may be accepted at face value does not grasp the real import of the statement: the Qur'ān is saying, to the contrary, that if the person's character is unknown the news should not be accepted, that only when it is known whether he is iniquitous or not may a judgment about the truth of his report be made. As for the Prophet's saying, "I judge only on the basis of outward appearances," this refers specifically to judgments of the Prophet and does not include our judgments; only the Prophet is able to make judgments on the basis of outward appearances. Finally, the claim that there was a consensus of the Companions in favor of accepting statements of persons of unknown character is, says Āmidī, based on cited instances that are not sufficiently numerous to justify the supposition of a consensus and may furthermore be countered by instances that point in the opposite direction. The upshot of the discussion, then, is that trustworthiness is tied, not merely to outward appearances, but to those inward traits that make up a person's character.

Any deliberate iniquity necessarily compromises a reporter's trustworthiness and requires that his report not be accepted as true. However, an inadvertent iniquity, if it is only thought to have been committed by the reporter, does not, by general agreement, have this effect. It is the middle case—the inadvertent iniquity that a reporter is definitely known to have committed—that occasions debate among the Muslim jurists.³⁶ Āmidī again joins the more rigorous camp: such an iniquity, he says, impugns the reporter's trustworthiness.

If trustworthiness does indeed belong to the realm of inward traits as opposed to outward demeanor, then in our attempts to determine whether or not persons belonging to past generations are trustworthy we are absolutely dependent upon the word of those who were in direct and intimate contact with those persons. We cannot presume from a person's being in generally good standing among his contemporaries that he was trustworthy: he could have been fooling his contemporaries, or at least all but those few who knew him well. But this creates a problem: are we not, in attempting to determine whether a particular reporter of, let us say, sayings and acts of the Prophet is trustworthy, dependent on the reports of others concerning his character? How, then, do we know that their reports are true? Must we not take into account their character as well? And if indeed we must, do we not have to repeat the same process again in trying to assess reports of their character, and so on *ad infinitum*. Is not an infinite regress intrinsic to the very system of determining the truth of reports on the basis of character assessments?

It is significant that Āmidī does not raise this as a problem. Had there been an infinite regress in the system, the Muslim dialecticians certainly would have picked it up. Apparently they did not sense an infinite regress. True, they acknowledged that reports on the basis of which a particular person's trustworthiness or untrustworthiness is to be determined must themselves come from trustworthy people and that the trustworthiness of these people must be established in the same manner. But they obviously did not see the process as repeating itself endlessly or they would have dealt with this as a problem.

It is important, I think, that we bear in mind that most Muslim jurists regarded the process of determination of the truth of reports as *ijtihād*, a scholarly enterprise designed to produce nothing more than an arguable opinion. The process *could* be carried on endlessly, though not perhaps *ad infinitum* in the true sense, since the process was concerned with a finite number of persons (however beyond precise calculation and beyond reach of scholarly research); but it did not need to be carried on endlessly in order to constitute *ijtihād*. It was, apparently, up to the individual mujtahid to decide just when he could stop, just when he had reached the point where he had a sense

of the probability of a truth of a report—probability being, as we have noted, a mere tipping of the scale, however slight, in favor of one possibility over another. There was general agreement that this tipping of the scale in favor of the trustworthiness of a reporter could not occur on the basis of a consideration of outward demeanor. A degree of probing into a reporter's character was necessary. But if one had a report supporting his trustworthiness and then, let us say, another report supporting the trustworthiness of the individual supplying that report, one might feel at that point that this was sufficient to tip the scale in favor of the trustworthiness of the individual supplying the original report. Furthermore, we must bear in mind that many jurists considered that there were grounds in divine revelation for affirming the trustworthiness of the entire generation of Companions of the Prophet. This initial plethora of trustworthiness was bound to assure that trustworthiness would be in good supply, if not universal, among Muslims for several generations to come.

Assuming that it was possible to arrive at a sense of the probability of the trustworthiness of the reporters whose reports were needed in order to establish the trustworthiness of the principal reporters, the ones who reported the sayings and acts of the Prophet and other religiously significant events, the next question that arose was: how many separate reports were necessary in order to establish the trustworthiness of the principal reporter?³⁷ This question arose out of the concern of some jurists to adhere to the requirements that were applied to witnesses. Whether a judge acted upon—that is, treated as true—the testimony of witnesses depended upon the number of witnesses. Since reporters are but witnesses, number must likewise be taken into account in evaluating what they say. This way of thinking was contrary to the majority view, according to which a single report is sufficient to establish—that is to say, render more likely than not—a principal reporter's trustworthiness. Āmidī, in defending this position, argues that the evaluation of the testimony of witnesses is not the same thing as the evaluation of the trustworthiness of reporters and therefore should not be subject to the same conditions (such as number).

Must one who reports that a contemporary is a trustworthy person give reasons for this assessment, or may the assessment be accepted at face value, without reasons?³⁸ Āmidī adopts a view that he attributes to the Ashʿarī theologian Bāqillānī: the assessment should be accepted at face value if the reporter is indeed himself a trustworthy person, for a person's trustworthiness is in and of itself sufficient assurance that the report will be true. Reasons are not essential.

Reasons could, however, become important in cases where reports concerning a given person contradicted each other.³⁹ What does one do when there is, on the one hand, a report that a given person was trustworthy and, on the other, a report that he was untrustworthy? In such cases, it is necessary to weigh reports against each other. In order to make this possible, reports are classified according to the following scheme.

Reports of trustworthiness are divided into three categories:

1. If the report of a person's trustworthiness is explicit (that is, in the form of a statement such as "So-and-so was trustworthy") and accompanied by a statement of reasons, the report is said to be "agreed upon."
2. If the report of a person's trustworthiness is explicit but is not accompanied by a statement of reasons, the report is said to be "disputed." This report obviously does not carry as much weight as the "agreed upon" report.
3. If the report of a person's trustworthiness is not explicit but is rather implicit in a judicial decision based on the testimony of the person in question or in a mujtahid's adherence to what he has himself reported, the report is again said to be "disputed." This report carries even less weight than the one above.

Reports of untrustworthiness are divided into two categories:

1. If the report is explicit and accompanied by a statement of reasons, it is said to be "agreed upon."
2. If the report is explicit but not accompanied by a statement of reasons, it is said to be "disputed."

As will be noted, reports of untrustworthiness may not be implicit.

When two reports are in conflict, the mujtahid must choose whichever of the two reports is weightier. But what if the two reports are equal in weight? In that case, the report of untrustworthiness takes precedence over the report of trustworthiness with one exception: if the report of untrustworthiness is accompanied by reasons that are refuted by the report of trustworthiness, then the latter takes precedence. There seems to be here a general preference for a presumption of untrustworthiness rather than for a presumption of trustworthiness. The exceptional case is the one in which there is no room for such a presumption.

There was among the Muslim jurists, as we have noted, a widespread belief in the universal trustworthiness of the Companions.⁴⁰ This belief was based upon three principal texts: the Qur'anic statement "Thus We have appointed you a middle nation that you may be witnesses against mankind" (2:143), believed to have been addressed exclusively to the Companions, and the Prophet's sayings "My Companions are like [guiding] stars; whichever of them you follow, you will be rightly guided" and "Indeed God has

chosen for me companions and kinsmen and supporters.” To these passages were added reminders of the well-known fact that the Companions faithfully supported the Prophet, migrated from place to place to be with him, fought on his behalf, defended their religion, and zealously obeyed the commands revealed through the Prophet. All this clearly does not establish with full certainty the universal trustworthiness of the Companions, but again we must remember that for Āmidī an opinion can be decisive in matters relating to the divine law. Apparently he regards the evidence as sufficient to tip the scales in favor of universal trustworthiness. He is careful, however, to point out that some jurists did not so regard the evidence but rather insisted that the Companions must be evaluated in the same way as all other persons. Others considered the Companions to be universally trustworthy until the outbreak of civil wars among them.

By whatever means the trustworthiness of the Companions was to be attested, they represented in the eyes of all Sunnis a privileged and superior generation. They were, after all, the original witnesses to the sayings, acts, and endorsements of the Prophet and to the Prophet's recitation of the Qur'ān, and they were, furthermore, pioneer mujtahids and Ijmā'-makers whose deliberations would close many of the gaps remaining after the close of the period of revelation. It was therefore important that information about the Companions be carefully preserved; and, as we know, it was preserved in works such as the *al-Tabaqāt al-Kubra* of Ibn Sa'd.

But any consideration of the acts and statements of the Companions presupposed an ability to identify them. Who exactly was a Companion?⁴¹ Ibn Hanbal, says Āmidī, considered a Companion to be anyone who had social intercourse with the Prophet, even if only for an hour; so did Āmidī's fellow Shāfi'is. Āmidī himself goes along with this view, basing his case on the literal sense of the Arabic term for “Companion,” *sahābī*, which can refer either to one who has associated with the Prophet for a brief time or one who has associated with him for an extended period. Other jurists, on the other hand, were more demanding. Only one who had associated with the Prophet for an extended period and had a special relationship with him could be considered a Companion. Others went even further: one must also have received instruction from the Prophet.

Āmidī takes up the subject of the modalities of the transmission of a report of individuals under the heading of *mustanad al-rāwī wa-kayfiyat riwāyatihi*.⁴² The first part of this heading—*mustanad al-rāwī* (literally, “the transmitter's basis”)—may be rendered as “that upon which the transmitter bases his transmission.” Ideally, the transmitter should have based his transmission on an empirical foundation, that is to say, on his having directly *heard* the report

he is transmitting upon the lips of a trustworthy person. However, where this direct auditory link between the transmitter and his source is not present, certain other links suffice, in some cases, in its place. The phrase *kayfiyat riwāyatihi*, which may be rendered as “the manner in which the transmitter transmits a report,” seems from Āmidī’s subsequent discussion to be a reference to the formula with which a transmitter begins his transmission of a report. A good example is the formula *akhbaranī fulānun bi-kadhā* (“So-and-so reported such-and-such to me.”) If a transmitter’s source is a genuinely trustworthy person—as indeed he must be if the transmitter is to give any consideration at all to his report—then he can be presumed to be telling the truth in his saying, “So-and-so reported such-and-such to me.” The phrase “to me” indicates a direct link between the transmitter and his trustworthy source: the transmitter has *heard* his source. Thus the formula functions as an indicator that the required empirical foundation of the transmission is present.

In considering Āmidī’s discussion of the modalities of the transmission process, we should keep in mind the duality, mentioned earlier, entailed in that process: an individual both reports and transmits a report of others. He reports what he has *heard* some other person say, and in so doing he transmits a report of what that other person, not he, has heard from someone else. Ultimately, as we have learned, every transmitter is transmitting a *quintessential report*, or text (*matn*), a piece of information concerning an authoritative figure such as the Prophet as supplied by original witnesses. I am in the present context giving greater prominence to the latter of the two aspects of the transmission process, to the transmitting of reports rather than to reporting.

We should also keep in mind that the whole discussion of the modalities of transmission presupposes that the trustworthiness of transmitters and their sources has been established. The methodology for the establishment of this trustworthiness has been delineated in the previous section of the *Ihkām*; Āmidī is now turning to an entirely new and independent subject, the modalities of a transmission process involving trustworthy persons.

Āmidī’s discussion is divided into two parts. First he deals with the modalities entailed in the transmission by the Companions of the Prophet of reports that they received from the Prophet; then he turns to the modalities entailed in all subsequent transmission. Āmidī clearly regards—no doubt in line with the thinking of Muslim jurisprudents in general—the Prophet-to-Companion link as *sui generis*. While there are certain principles and issues that are common to it and to other links in the overall transmission process, other principles and issues are entirely unique to it; and, similarly, certain principles and issues are unique to the other links.

The notion of a report that emanates from the Prophet that the Companions transmit to others may at first seem curious, particularly in view of my own emphasis, in discussions of the transmission process in preceding pages, on the transmission by later generations of reports of the Companions *concerning* the Prophet. What can the Prophet be said to report? Is it not, properly speaking, persons other than the Prophet who report what the Prophet has said or done? It is important that we remind ourselves at this juncture of a point brought out earlier. In the final analysis, the Prophet himself is but a reporter of an event that has taken place within his experience, the event of revelation. While in a state of special receptivity known as *wahy*, the Prophet sees the Angel Gabriel and hears upon his tongue words that the Angel in turn has received from God in the highest heaven. Some of these words are recited verbatim and constitute the Qur'ān; others are the well-spring of the Sunna. The Sunna is, let us remember, in Āmidī's own words the Prophet's reporting of the event of revelation—a reporting in his own words, or even through his acts, but a reporting nonetheless. The Companions are recipients of this prophetic reporting, which they then report to others. The whole life of the Muslim community is centered upon the event of revelation. The Prophet alone, through *wahy*, is witness to that event; the Companions are witnesses to his sayings and acts, to his reporting of the event of revelation. They are in relation to the Prophet's sayings and acts a privileged generation, witnesses of a rank unattainable by any other generation.

The Muslim jurists were, in their discussions of the transmission process, preoccupied with the Companions' reports concerning the Prophet and the transmission of these reports from generation to generation principally because these discussions were fundamentally concerned with the question of how reports of persons *other than the Prophet* may be known to be true. It was to this question that the all-important principle of *tawātur* was addressed, as well as the methodology for determining the trustworthiness of reporters/transmitters. The truth of the Prophet's reports was determined in an entirely different manner. It did not, therefore, belong within the same discussion. In fact, it was not discussed within Islamic theoretical jurisprudence at all but was rather discussed within theology (*kalām*). Reports of the Prophet enter into the present discussion since the reports of the Companions are reports—that is to say, transmissions—of those reports. That this is so will be reflected in the modalities of transmission entailed in the Companions' reporting.

A Companion's report, or transmission, may accordingly begin with any one of the following formulae:⁴³

1. *Sami‘tu rasūla ‘llāhi—sallā ‘llāhu ‘alayhi wa-sallama—yaqūlu kadhā*, “I heard the Apostle of God—God bless him and grant him peace—say such-and-such.”

2. *Akhbaranī [rasūlu ‘llāhi] bi-kadhā*, “The Apostle of God reported such-and-such to me.”

3. *Haddathanī [rasūlu ‘llāhi] bi-kadhā*, “The Apostle of God informed me of such-and-such.”

4. *Shāfahanī [rasūlu ‘llāhi] bi-kadhā*, “The Apostle of God spoke to me of such-and-such.”

The first of these formulae, by employing the words “I heard,” points with absolute clarity to an empirical foundation underlying the report. We are hard-pressed, however, to find examples of this formula in the compilations of *hadīth*. It is a kind of ideal model. The remaining formulae are, however, almost as strong in their indication of an empirical foundation. *Akhbaranī*, *haddathanī*, and *shāfahanī* all leave little doubt that the speaker has heard words upon the lips of the Prophet. One may wonder why the phrase *qāla lī rasūlu ‘llāhi*, “The Apostle of God said to me,” is not included among these formulae, since it is as indicative of direct hearing of a prophetic utterance as the other formulae. Perhaps we are to regard the above-mentioned four formulae as examples of a type of formula rather than as an exhaustive list.

It may be noted that the above-mentioned formulae as well as the first three of the controversial formulae about to be mentioned give pride of place to the transmission of sayings of the Prophet. There seems to be rather little concern, in Āmidī’s discussion of the modalities of transmission, with the reporting of acts of the Prophet, not to mention endorsements. One would not expect a report of a prophetic act to begin with *akhbaranī rasūlu ‘llāhi*. This preoccupation with prophetic sayings no doubt reflects a greater interest in sayings and the generally greater abundance of sayings in the *hadīth* literature, as compared with acts and endorsements. Prophetic acts entailed, on the whole, greater problems of interpretation than sayings. The latter could, of course, baffle the most ardent devotee, but they could also attain a degree of clarity unthinkable for acts. For this reason, Muslim religious scholarship exhibits a special longing for the prophetic word. We must, on the other hand, further bear in mind that an act of the Prophet was, as has just been indicated, a kind of reporting—certainly it was a conveying—of the event of revelation.

Since the above-mentioned formulae, or the type of formula that they exemplify, clearly indicate an empirical basis for a report, reports that begin with such formulae are to be treated as authoritative indicators of the divine law. On this, says Āmidī, the Muslim jurisprudents are agreed. Crucial to this agreement is a steadfast conviction that the Companions, all being

trustworthy persons, would never lie—if a Companion said, “I heard the Apostle say such-and-such,” we must never doubt that he did indeed hear the Apostle say such-and-such.

Other formulae that may, whether in theory or in fact, be used by Companions prove, in the context of Muslim dialectic, to be controversial. These are as follows:

1. *Qāla rasūlu ‘llāhi kadhā*, “The Apostle of God said such-and-such” (note absence of *lī*, “to me”).⁴⁴ Āmidī, opposing his Ash‘arī predecessor al-Bāqillānī, adheres to the majority view, which is that this formula establishes a *probability* that the Companion uttering it did indeed hear the Prophet say what follows and that the report should, by virtue of this probability, be treated as an authoritative indicator of the divine law. The argument for this view is that the formula gives the impression that the speaker heard the Prophet; the Companions knew this, and being trustworthy persons they would not likely have permitted false impressions. Since this formula occurs fairly frequently in *hadīth* literature, the controversy over it has a great bearing upon the stance one takes toward the written *hadīth* compilations. Probability is not, of course, the same thing as certainty, and Āmidī must allow for the possibility that a Companion using this formula did not actually hear the Prophet speak the words related in the report but attributed the words to the Prophet on the basis of the testimony of an unmentioned intermediary. In this case the report falls within the category of *khabar mursal*, a subject to be taken up shortly.

2. *Samī‘tu rasūla ‘llāhi ya’muru bi-kadhā wa-yanhī ‘an kadhā*, “I heard the Prophet command such-and-such and proscribe such-and-such.”⁴⁵ The problem with this formula, in the minds of certain jurists, is that it expresses an interpretation on the part of the speaker. It begins, we may say, on the right foot in that in employing the phrase “I heard” it indicates that what follows has the requisite empirical foundation; but then what follows does not consist of the actual words heard. Since the precise words of the Prophet are not reported and since commands and proscriptions are expressed by means of a variety of linguistic forms, some of which are subject to differing interpretations, we cannot at all be sure that the Prophet did indeed command or proscribe the matters reported. Therefore, according to certain jurists, a report incorporating this formula is not an authoritative indicator of the divine law. Āmidī again favors the majority view, according to which such a report is an authoritative indicator of the divine law. Any Companion using this formula would have been aware of differences of interpretation if any existed; his use of the formula would indicate that such differences in fact did not exist among his fellow Companions and that he was certain that a prophetic command or proscription had been issued.

3. *Umirna bi-kadhā wa-nuhīna ‘an kadhā*, “We were commanded to do such-and-such and forbidden to do such-and-such.”⁴⁶ Siding again with the majority of jurists, Āmidī argues that a report incorporating this formula must be an authoritative indicator of the divine law since the phrase “we were commanded to do such-and-such” obviously means “we were commanded by the head of our community—that is, by the Prophet—to do such-and-such”; for in any community all commands must ultimately derive from the one who is head. Thus “We were commanded to do such-and-such and forbidden to do such-and-such” translates into “the Prophet commanded such-and-such and proscribed such-and-such.” This recasting gives us the formula considered above (“I heard the Prophet command such-and-such . . .”) without the “I heard.” If we apply here Āmidī’s reasoning with respect to the first of the controversial formulae (“The Prophet said such-and-such”), we end up with an argument to the effect that “The Prophet commanded such-and-such and proscribed such-and-such” establishes a probability that the speaker heard the Prophet utter words embodying the command or proscription in question, for it gives an impression that this is so and no trustworthy person—and the Companions were all trustworthy persons—would wish to give this impression unless it was correct. We thus seem to have in “We were commanded to do such-and-such and forbidden to do such-and-such” an implied *probable* empirical link with the Prophet, although Āmidī does not expressly bring this out. Where the probability of such a link is ruled out, the report constitutes a *khābar mursāl*.

4. *Min al-sunnati kadhā*, “Such-and-such is part of the Sunna.”⁴⁷ The majority view—and Āmidī’s—is that a report containing this formula is an authoritative indicator of the divine law for reasons identical with those cited in connection with “We were commanded to do such-and-such and forbidden to do such-and-such.” For no one in a community can say that a thing is part of the normative custom (*sunna*) of his community unless that thing emanates from the head of the community, the Prophet. If we then argue that the formula in question translates into “The Prophet commanded such-and-such,” we have again the implied *probable* empirical connection with the Prophet mentioned above.

5. *Kunnā naf‘alu kadhā, kānū yaf‘alūna kadhā*, “We used to do such-and-such,” “They [i.e., the Companions] used to do such-and-such.”⁴⁸ Following the majority line on this last of the controversial formulae, as on the preceding, Āmidī argues that this formula entails an obvious appeal to custom for the purpose of proving a point. For the Companions, such an appeal would have validity only if the custom reflected the unanimous practice of the community. Here we seem to have an involvement of the consensus principle

without any empirical link, implied or explicitly indicated, with the Prophet. As an expression of the community's consensus, the report that employs this formula is an authoritative indicator of the divine law. Why, we may ask, does Āmidī bring this formula into a discussion that quite patently has as its primary concern the link between the Prophet and Companions who transmit his sayings? There is perhaps a suggestion here that even a consensus of the Companions represents a type of transmission of data from the Prophet. The reader may recall from our earlier discussion of consensus-related issues that the Muslim jurists debated whether a consensus must have a *mustanad*, the very term that I have in the present context translated as "empirical foundation." Those who took an affirmative position on this issue were saying, in effect, that when the Companions agreed upon anything they did so on the basis of an empirical witnessing to actual words or acts of the Prophet. The Companions did not have, according to this view, the authority to engender a normative custom entirely on their own. A Muslim jurist might, of course, also argue that "We used to do such-and-such" translates into "Such-and-such is part of the Sunna" (the above-mentioned formula) and that the reasons for regarding the latter as indicative of the divine law (see above) apply to the former as well. But Āmidī does not develop his own argument along this line.

As for the modalities entailed in transmissions of persons other than Companions of the Prophet,⁴⁹ these bring into play some of the formulae that have been mentioned above and some that have not. Transmissions of the Companions are ideally based upon a direct link between the transmitter and the Prophet, a link consisting of hearing words spoken by the Prophet. The *khabar mursal*, which we shall consider shortly, represents a clear departure from this ideal, and the realization of the ideal is less than fully certain in the case of reports beginning with the controversial formulae mentioned above. Transmissions of generations after that of the Companions are, in contrast, based on a link between the transmitter and a very different sort of source, called by Āmidī a shaykh. From the ensuing discussion we soon learn that a shaykh is one who *recites* (*qara'a*) material in the presence of others. (The reader should not fail to note that it is not only Qur'ānic material that is recited; so is *hadīth* material.) Quite obviously, we are presented here with the figure of the venerable *hadīth* specialist—the scribe of Islam—who sits surrounded by a circle of students reciting *hadīth* narratives to them. He is an acknowledged transmitter of an older generation reciting to potential transmitters of a younger generation, the future shaykhs. As his students begin to transmit *hadīths* on their own, their link with him takes on crucial importance. The

nature of this link varies according to circumstances and is reflected in the formula the transmitter employs.

A transmitter may, to begin with, base his transmission upon what he has heard the shaykh recite. In this case the link between him and the shaykh is a direct empirical link of the sort discussed above with reference to the Companions and the Prophet, and the material transmitted should, according to a general agreement among jurists, be accepted as an authoritative indicator of the divine law. If the shaykh directed his recitation specifically to the transmitter, the transmitter will employ a formula such as *haddathanī fulānun*, “So-and-so informed me,” and *akhbaranī fulānun*, “So-and-so reported to me.” If the shaykh directed his recitation to a larger audience of which the transmitter was a part, but not specifically to the transmitter, the transmitter will employ a formula such as *qāla fulānun*, “So-and-so said,” and *samī‘tuhu yaqūlu kadhā*, “I heard him say such-and-such.”

The transmitter may, however, base his transmission, not on what he has heard the shaykh recite, but on what he has heard from others—presumably persons who are not recognized shaykhs—and has then confirmed it by reciting it in the presence of the shaykh. In this case, he may be said to have received his data from the shaykh, not directly but indirectly. The formula that he uses will be along the lines of *akhbaranī* (or *haddathanī*) *fulānun qarā’atan ‘alayhi*, “So-and-so [i.e., a particular shaykh] related, or reported, such-and-such to me by way of my recitation in his presence.” He should not, in Āmidī’s view, employ *haddathanī* or *akhbaranī* alone, that is to say, without the *qarā’atan ‘alayhi*, although other jurists disagree. One gathers from Āmidī’s discussion that the shaykh’s confirmation of a recitation may be either expressed or tacit. In the latter case, the shaykh remains silent after the recitation, allowing his silence to indicate his consent. This latter kind of confirmation provoked controversy among the Muslim jurists. Āmidī takes the view that a trustworthy person, realizing his silence would give an impression of consent, would not remain silent unless he did indeed approve of the recitation; therefore, the recitation constitutes an authoritative indicator of the divine law.

There is a third way in which a transmitter may “receive” material from a shaykh: the shaykh may authorize the transmitter to transmit *as from him* a given body of material. This authorization will take place in one of two ways: either the shaykh will say, “I authorize you to recite such-and-such written compilation (*kitāb*) as from me,” or he will say, “I authorize you to recite whatever you consider to be sound from among the material that you have heard me recite [*masmū‘ati*].” Here it is not a particular datum whose transmission is under consideration but rather a *corpus* of material. We seem to

be confronted at this point with that stage in the development of *hadīth* narratives—beginning with the Mutawatta' of Mālik ibn Anas and culminating in the classical *hadīth* compilations—in which the focus of scholarly effort was upon the gathering and screening of *hadīth* material rather than upon the transmission of isolated data. Reception through authorization did not require a link between transmitter and shaykh for every datum transmitted; it required only the link of authorization. The shaykh must address the transmitter directly with the words, "I authorize you." In the sense that the transmitter will have heard these words spoken to him an empirical foundation of sorts may be said to undergird the transmission.

The validity of this rather wide-ranging "link" between shaykh and subsequent transmitter depends, of course, upon the integrity and trustworthiness—not to mention phenomenal mastery of *hadīth* material—of the shaykh. These qualities are the linchpin of the whole system. Where a transmitter transmits on the basis of an authorization from a shaykh, he will employ a formula such as *ajāzani fulānun kadhā*, "So-and-so authorized me to relate such-and-such," or *haddathani* (or *akhbarani*) *ijāzatan*, "He reported, or related, such-and-such to me by way of an authorization." Whether he may employ the simple formula *haddathani* or *akhbarani* is, again, debated, with Āmidī taking the position that he may not.

A final method of "reception" is, by general agreement, unacceptable. A transmitter may not use as the basis for his transmission a written statement from a shaykh to the effect that the shaykh "has heard such-and-such." What is lacking here is direct contact between the transmitter and the shaykh, which is clearly, for all jurists, a *sine qua non* of valid transmission. The repercussions this attitude has for the process of transmission after the great classical compilations of *hadīth* narratives have been completed and gained universal currency among Muslim scholars are enormous. To the extent that scholars rely upon these compilations for their knowledge of *hadīth* material rather than upon reception from a shaykh, the transmission process has come to an end. We must, of course, bear in mind that young scholars continued to learn *hadīth* material from shaykhs, long after the compilations were in existence. If one mastered the *Sahīh* of Bukhārī, for example, through study under an eminent shaykh who had mastered it during his youth through study under an earlier shaykh—a method of study that stands in sharp contrast, in medieval Muslim thinking, to study from the written page alone—one was in effect, we gather, carrying the process of transmission forward.

Finally, Āmidī turns to the various factors that may fault a report—or rather, depending on one's point of view, a transmission of a report—by a trustworthy person. Such factors are to be distinguished from the factors that

may fault the transmitter himself, calling into question his trustworthiness. These are dealt with under the heading of *jarh*, which is part of the methodology through which the character of transmitters is evaluated. This we have already considered. Here we are proceeding, as in the pages immediately preceding, on the assumption that the transmitter is trustworthy and considering factors not related to his character that may fault a particular transmission.

What if a transmitter conveys to us, not the precise words of the Prophet, but the Prophet's intended meaning expressed in his own words, that is to say, through synonyms chosen by him?⁵⁰ Does the report he transmits in this case constitute an authoritative indicator of the divine law? We are not here, it should be noted, dealing with the question of whether the meaning of a number of reports whose wording differs should be accepted as authoritative. Such a meaning, we learned earlier, may span a number of individual reports sufficient to give it the status of a *mutawātir* meaning. The reports themselves may contain, or purport to contain, unmodified sayings of the Prophet uttered on a variety of different occasions; or where they are concerned with a saying uttered on a single occasion, they may represent different recollections of what the actual words of the Prophet were. Here we are concerned with a particular report, taken in isolation, that does not entail a claim to provide us with the actual words of the Prophet but only with his intended meaning.

According to Āmidī, the position of the great majority of jurists, including himself, with respect to this latter type of report is that if the transmitter fully understands the Prophet's original words then he is entitled to transmit the meaning in his own words, whereas if he does not fully understand the original words he is not so entitled. We may ask: how can anyone possibly know whether a transmitter, long since dead, fully understood words he heard upon the lips of the Prophet (if he was a Companion) or upon the lips of another transmitter? Clearly, this is not easily known. Much seems to depend on one's sense of the trustworthiness of the transmitter. If he is truly trustworthy, then one may assume that if he did not fully understand the words he heard he would not have attempted to recast the meaning in his own words, since this would have entailed a risk of corrupting divine revelation, which no trustworthy Muslim would have undertaken.

On the other hand, the question of whether, given the transmitter's full understanding of the original words, he is entitled to recast the meaning in his own words has important repercussions in that the position one takes will determine in large measure the degree of confidence one has about the vast body of transmitted material in circulation. If one accepts that it is a common human trait, one which is not inconsistent with trustworthiness, to report what one understands perfectly in one's own words, especially in view of the

fact that meanings are more easily remembered than precise wording, then one may be inclined to regard a great deal of the material in circulation as representing such a recasting. If one disallows such recasting, one risks placing oneself in the position of an unduly harsh or demanding critic of a corpus of material that constitutes one of the principle vehicles of divine revelation in Islam. Āmidī's case for a more lenient position rests partly upon a *hadīth* narrative according to which someone said to the Prophet, "O Apostle of God, you relate to us narratives that we are not able to repeat exactly as we heard them," and the Prophet replied, "If any of you grasp the meaning correctly, let him relate [it as best he can]." To this he adds the argument that none of the Companions of the Prophet objected to Ibn Mas'ūd's sometimes saying, "The Prophet said such-and-such, or something like it," indicating a tacit Ijmā'ic consensus in favor of this approach. Finally, Āmidī argues that reason alone tells us that what is really intended by any statement or report is not a particular set of words but rather a meaning.

What are we to do if we have, on the one hand, a report that a transmitter claims to have transmitted on the basis of his having heard a certain shaykh recite it and, on the other, a statement from the shaykh repudiating the report?⁵¹ If the shaykh made it clear that he repudiated the report because he subsequently discovered that it was unreliable, then we must also repudiate the report. If, however, the shaykh has not made this clear, then we must make allowance for the possibility that he simply forgot that he had earlier related the report. In this case, we should, according to the majority view and Āmidī's, accept the report. Āmidī cites the example of the Companion Sahl ibn Abī Sālih, who forgot that he had once related a certain story about the Prophet to Rabī'a ibn Abī 'Abd al-Rahmān and used to say—presumably in his last years of life—"Rabī'a reported to me that I had reported such-and-such to him." None of the other Companions, Āmidī argues, objected to this practice; therefore, it has the support of a tacit Ijmā'ic consensus.

If a number of transmitters transmit a report and one of them includes in the report something not transmitted by the others, the additional element should, according to the majority view, be accepted so long as the number of transmitters is not such as to render the shorter version of the report *mutawātir*; for no addition by a single transmitter to a *mutawātir* tradition should be accepted.⁵² This way of thinking presupposes that the report in question is an indivisible entity and cannot be properly transmitted *in part*. If individuals transmit a report in part, they do so on account of a failure of memory; such a failure is not possible, apparently, on a *tawātur* scale. An addition to a *mutawātir* report is therefore necessarily spurious, since a *mutawātir* report will always be complete. Where a report does not constitute

an indivisible or integral whole, it is permissible for the transmitter to transmit it knowingly in part. Accordingly, the part transmitted must be accepted as an authoritative indicator of the divine law.

Some jurists, *Āmidī* tells us, faulted a report transmitted by trustworthy individuals if the report pertained to a matter of great urgency (*mā ta'ummu bihi 'l-balwā*: literally, "a matter that urgent need embraces").⁵³ The argument of these jurists was that whenever the Prophet made a statement pertaining to such a matter he must necessarily have made certain that the statement was heard by a great many people such that its transmission would be on a *tawātur* scale. It is inconceivable, in other words, that he would have subjected his statement to the vagaries that attend the transmission of reports through limited numbers of individuals; therefore, whenever we are presented with reports of trustworthy individuals (as opposed to *mutawātir* reports) pertaining to a matter of great urgency we should regard the reports as spurious.

Āmidī mentions as examples reports of two Companions of the Prophet: a report of Ibn Mas'ūd pertaining to the violation of the state of ritual purity through contact with the sexual organ and reports of Abū Hurayra pertaining to raising both hands during the ritual prayer and to eating inadvertently during the fasting hours of Ramadān. These are matters on which the community is in urgent need of guidance from the Prophet since they have to do with the correct performance of fundamental religious duties linked to ultimate salvation. Since relief of the bladder (requiring contact with the sexual organ) and eating are everyday human functions and since the religious duties affected are duties that all Muslims must discharge in order to attain salvation, we must accept prophetic guidance with respect to such functions as they bear upon religious duties only on the basis of widespread (that is to say, *mutawātir*) transmission; transmission by trustworthy individuals—even those whose trustworthiness is as unquestioned as that of Ibn Mas'ūd and Abū Hurayra—is not sufficient to require our acceptance.

Āmidī is confident that stronger arguments lie on the side of the majority view, according to which reports of trustworthy individuals pertaining to matters of great urgency are to be accepted as valid indicators of the divine law. He cites a Qur'ānic passage in which individuals are assigned the task of admonishing their fellow-Muslims. Since the language of this passage is general, we must assume, he argues, that the individuals are to admonish their fellows—that is to say, convey to them prophetic admonitions—in respect to *all sorts* of matters, including matters of great urgency. Furthermore, there was, according to *Āmidī*, a consensus among the Companions themselves in favor of acceptance of certain reports of individuals among their number that pertained to matters of great urgency. The real crux of the argument for

accepting such reports, however, seems to consist of the principle of trustworthiness. Either this principle, which is the foundation of the science of *ḥadīth*, is valid or it is not. If it is valid—and both sides in the present debate accepted its validity—then we must make no exceptions to its application. Trustworthiness, once established, creates a probability of truthfulness on the part of the transmitter, whether the report pertains to a matter of great urgency or not. And probability constitutes, according to a fundamental principle propounded by Āmidī throughout the *Ihkām*, a sufficient ground upon which to construct the divine law.

Is a report of a trustworthy individual that relates a saying of the Prophet to be regarded as faulty if it is in conflict with an act of the Prophet? This question takes us back to the larger question of contradiction between sayings and acts of the Prophet, a complicated subject we have dealt with earlier.⁵⁴ The subject reemerges in the present context because of the bearing it may have upon a report's acceptability; but Āmidī touches on it only lightly, not wishing, apparently, to open the door to a tedious debate that has taken up space elsewhere in his book. The upshot of Āmidī's present discussion is that, if an alleged contradiction between a report of a saying of the Prophet and an act of the Prophet—which can, of course, be known only through a report—can be shown to be a genuine contradiction according to the principles earlier laid down, then one must weigh the two reports against each other and accept as overriding the one whose truthfulness has the highest degree of probability.

What of a report of a trustworthy individual that is in conflict with a rule established by analogy?⁵⁵ Here, again, there are complications that I shall not delve into since we have not yet taken up the subject of analogy at length. Suffice it to say at this point that much hinges upon the degree of clarity of the texts involved, that is to say, the text from which the analogy is drawn and the report under consideration. Āmidī's view is that the text possessing greater clarity takes precedence over the other. In the event that the two texts are equally clear, then precedence should be given to the report.

We come now to the all-important subject of the *khavar mursal*,⁵⁶ the report that attributes a saying to the Prophet, not on the basis of a direct hearing of the saying, but on the basis of the hearing of someone else whose name is not mentioned. *Irsāl* is the attribution of a saying to the Prophet (*rasūl*) through the use of a formula such as *qāla rasūlu 'llāh*. This formula, as will be recalled, stands in contradistinction to formulae such as *haddathanī fulānun bi-kadhā*, which specify the intermediary linking the transmitter with the Prophet. As we have already noted, Āmidī considered the formula *qāla rasūlu 'llāh* as establishing, in cases where the speaker was a Companion of the

Prophet, a probability that the report was based on a direct hearing of words of the Prophet. Here we are dealing with a situation in which that probability does not exist. If it seems improbable that the Companion himself heard the words reported or if the transmitter belonged to a generation following that of the Companions such that he could not possibly have heard those words, then what are we to do with the report? According to Āmidī, three of the great masters of jurisprudence—Mālik ibn Anas, Abū Hanīfa, and Ahmad ibn Hanbal—held that the report should be accepted unconditionally as an authoritative indicator of the divine law. Shāfiʿī, on the other hand, made the acceptability of the report rest upon the satisfaction of any one of a number of conditions. If, for example, the report came originally from a Companion of the Prophet, or if it was supported by other reports having better transmission credentials, it would be accepted. We are not given the names of persons or schools that rejected the *mursal* report altogether, although one gathers from the ensuing account of Muslim debate that such persons must have existed, however unpopular their viewpoint.

Āmidī takes the position of the three masters, which, we gather, is the position of the majority of Muslim jurists. He claims, first of all, an Ijmāʿic consensus in support of this position, one spanning the first and second generations of Muslims. As he explains later on, this consensus is a tacit one (*ijmāʿ sukūṭī*). Indeed, whenever the principle of consensus is utilized in the *Ihkām* it is almost always a tacit consensus that Āmidī has in mind. Thus we are told, for example, that Ibn ʿAbbās and Abū Hurayra both reported information concerning the Prophet on the *qāla rasūlu ʿllāh* format and then *later on* stated that they had received this information from others. From the absence of any objection to their having originally reported the information without mention of their sources we may infer a consensus of the Companion in support of the *irsāl* method of reporting.

Along with this argument from tacit consensus Āmidī offers a purely rational argument. When a trustworthy person says, “The Prophet said such-and-such,” he gives an impression of self-assurance about what he is reporting, for he would not, as a trustworthy person, allow himself to say such a thing unless he either knew or was of the opinion that what he was reporting was true. If he in fact was of the opinion that what he was reporting was not true or doubted that it was true, he could not possibly display this self-assurance, for his religion—which forbids the transmission of falsehood—would prevent him from doing so. In other words, his religion requires that he be sure of the trustworthiness of the one from whom he received his information. The formula “The Prophet said such-and-such” thus implies a prior determination of the trustworthiness of one’s source.

Āmidī's ensuing account of the debate over this issue shows that, despite these arguments, those who held the majority view were constrained to deal with certain problems. How can we be sure that "The Prophet said such-and-such" presupposes a prior *ta'dil*? Can it not be argued that trustworthy persons sometimes will report information conveyed to them by other persons when they might, if questioned, deny the trustworthiness of those other persons or at least refrain from affirming it? Furthermore, is it not possible for a trustworthy person to be *wrongly* confident about the truth of what he is reporting, to be confident when in fact what he is reporting is false? And even if we admit, for the sake of argument, that a *mursal* report presupposes a prior judgment in favor of the source's trustworthiness, what good is this to us if the source is not mentioned by name so that we can confirm or invalidate the judgment? For one person's judgment that a source is trustworthy may be countered by another person's judgment that the source is untrustworthy. There is also the possibility that a trustworthy person may be reporting information he received from a source whose identity he cannot remember, particularly if the reporting occurs long after the reception of the information. Not to know a source's identity has even more serious consequences than not knowing a source's character; for if the source's identity is known and conveyed to us, we may then attempt to investigate the source's character, but if it is not known then the character of the source can never be known.

Āmidī has a ready response to each of these problems, as well as other problems I shall not mention here. We cannot, admittedly, be entirely certain that a *mursal* report transmitted by a trustworthy person entailed a prior determination of the trustworthiness of the source, but we have good reason to regard this as probable, and it is upon probability that the work of formulating the law must proceed. Similarly, while it is possible that a trustworthy person may be wrongly confident about the truth of what he is reporting, the probability is that he will not. As for the value of a judgment that a source is trustworthy when the source is not identified, this lies in the probability of trustworthiness that the judgment establishes. Where the source is identified, we are able to enter into the process of determining trustworthiness and thus to increase the probability of trustworthiness. Even when the identity of the source has been forgotten, probability—which, let us remember, is the preponderance of one possibility over another—still may be ascertainable. For one may fail to remember the precise identity of one's source while remembering in a vague way (*min jihat al-jumla*) that the source was trustworthy.

Āmidī injects into his discussion of issues relating to the acceptability or nonacceptability of reports of trustworthy individuals a brief discussion

of an issue of quite a different nature: the acceptability or nonacceptability of explanations of ambiguous or interpretable words or phrases contained within the report by persons reporting information concerning the Prophet.⁵⁷ By “interpretable” I mean susceptible to *ta’wīl*, the interpretation of words and phrases that sets aside their literal in favor of a nonliteral sense, a subject to be taken up at length later in this book. From Āmidī’s discussion we soon discover that he is concerned with explanations offered by Companions of the Prophet. They are, let us remember, the product of unaided *human* thought and accordingly stand apart from the prophetic declarations that are the proper subject matter of reports. But they are capable of providing a vital key to the understanding of those declarations. Consequently, they require scrutiny much like that which is applied to the reports themselves. When is such an explanation to be accepted, and when is it not? What factors might fault such an explanation? According to Āmidī, there was agreement on two things. First, if a report is susceptible to several equally plausible explanations, we must accept as authoritative the one that the Companion making the report supplies, since in matters of divine law the Prophet would surely have provided some sort of contextual clues as to his intended sense, and the Companion is more likely to have a knowledge of this clue than a person of a later generation. Second, if a report is clear and unambiguous, not admitting of diverse explanations, any explanation that contradicts the clear sense must be rejected. Disagreement among the jurists arose over reports that admitted of diverse explanations that were not on an equal footing, one of which adhered to the plain literal sense of the report and others of which favored a sense other than the literal one.

As we shall later see, Muslim hermeneutical theory insisted on a presumption in favor of the literal meaning of a text when there were no positive clues indicating that some other meaning was intended. Ambiguity, in contrast, created a situation in which clues *had* to be taken into consideration if an intended meaning was to be known at all. Where a nonambiguous literal sense existed, the clue lost this crucial role. An intended meaning could be presumed apart from any clue. Shāfi‘ī and the majority of specialists in *fiqh*, we are told, so favored the literal sense that they insisted that it be accepted over and against any nonliteral sense that might be favored by a Companion. Some Hanafis, however, preferred to give precedence to the point of view of the Companion. Āmidī takes the position that if the Companion’s reasons for favoring the nonliteral sense are known then his explanation should be accepted as authoritative; otherwise, it should not. This, he tells us, was also the position of the two great Mu‘tazilī jurists, ‘Abd al-Jabbār and Abu’l-Husayn al-Basrī.

COMMANDS

Of the five basic categories of indicators of the divine law, three—Scripture, Sunna, and Ijmā^c—fall, as we have noted, under the broad heading of texts (*mutūn*). In the previous chapter, we considered Āmidī’s discussion of one of two major topics relating to texts, namely, their transmission. In this and the following four chapters, we will take up Āmidī’s discussion of the other topic, the *indicatory functioning* (*dalāla*) of texts. It may be recalled that Āmidī subsumes under the heading of *usūl al-fiqh* “the ways in which the indicators [of the divine law] function as indicators of [specific] rules” (*jihāt dalālātihā ‘ala ‘l-ahkām al-shar‘īya*: more literally, “the aspects of their functionings as indicators of the rules of law”).¹ Here we shall be concerned with the indicatory functioning of texts. That of the nontextual, or quasitextual, indicators will be considered in later chapters (12 through 14).

Āmidī divides his discussion of the indicatory functioning of texts into two main sections, a very long section comprising approximately one-fourth of the entire *Ihkām* that deals with matters pertaining to the indicatory functioning of all three categories of texts,² and a much shorter section that deals with a matter pertaining only to the indicatory functioning of Qur’ānic and Sunnaic texts, namely, abrogation.³ The former is in turn divided into sections. The first and longest deals with the indicatory functioning of the ordered language (*al-manzūm*) of the text, the second with the indicatory functioning of what Āmidī describes simply as “other than the ordered language” (*ghayr al-manzūm*) of the text. A Qur’ānic, Sunnaic, or Ijmā’ic text, says Āmidī, may function as an indicator of the law either by virtue of its ordered language or not by virtue of its ordered language.⁴ A text has, in other words, two aspects: the aspect that is called *manzūm*, “ordered language,” “composed discourse,” and the aspect that is other than the *manzūm*, that lies beyond the *manzūm*. Just what Āmidī means by *manzūm* can be best understood from his later definition of its opposite, *ghayr manzūm*, the “other than the *manzūm*” just referred to. This, he says, consists of “that which functions as an indicator [of

the divine law] not through the explicit meaning of its [linguistic] form and [not through] its original assignment [*wadʿ*].”⁵ From this negative definition we may extract a positive definition of *manzūm*. It is that which functions as an indicator of the divine law through the explicit meaning of its linguistic form and through its original assignment. The phrase “through the explicit meaning of its linguistic form” may be expanded into “through the explicit meaning it carries by virtue of its linguistic form.”

The phrase “through its original assignment” I take to be intended as a complement to the phrase immediately preceding it, adding nothing of substance to the definition. It may seem to suggest that explicit meaning is simply literal meaning, that it consists of nothing more than those meanings that constitute the original *mawdūʿ laḥā*. However, it soon becomes clear that Āmidī includes *majāz*-expressions within the domain of the *manzūm*. Accordingly, we must, I think, regard the category of explicit meaning as including both literal and nonliteral meaning. Why, then, the phrase “through its original assignment”? Two things should be kept in mind. First, the nonliteral meanings that *majāz*-expressions are used to convey are always connected in some way with literal meanings such that literal meanings may be regarded as a foundation for usage of expressions in the *majāz* mode. Secondly, the use of *majāz*-expressions was, as was noted in chapter 3 of Part I, believed by the great majority of Muslim scholars to be rooted in some way in the original invention (*wadʿ*) of the *Lughā*.⁶ Opinion was divided as to whether this rootedness entailed the establishment by the inventor(s) of the *Lughā* of each and every *majāz*-expression that a speaker may use or merely of a general principle authorizing the subsequent invention of particular *majāz*-expressions.

We may, I think, make sense of the distinction between *manzūm* and *ghayr manzūm* by taking a clue from the common English expression “to read between the lines.” When speakers of English speak of looking for meaning “between the lines,” they suggest that a text may convey more than what its words and phrases explicitly say. “The lines” expresses nicely the notion behind the term *manzūm*. The verb *nazama* has as its basic meaning “to string,” and the verbal noun *nazm* is often applied to the composition of poetry, which is viewed as a stringing together of gems to form a necklace. Though primarily evocative of poetry, these words can be applied to all forms of composed discourse, as indeed they are in Āmidī’s usage. When one composes any sort of piece—whether a poem, an anecdote, a narrative, or a treatise—one is stringing together expressions to form an extended discourse. The English expression “lines” refers to this larger discourse. This being the case, *ghayr manzūm* readily lends itself to translation as “between the lines.”

This distinction between "the lines" and "what is between the lines," between the *manzūm* and the *ghayr manzūm*, presupposes that the text embraces both and that "what is between the lines" is as objectively present before the reader as the lines themselves, conveying meaning as definitely as do the lines. "What is between the lines," it should be noted, refers not to meaning as such but to a bearer of meaning, something in the text that exists apart from actual words and phrases but conveys a meaning as certainly as do the words and phrases. If the *ghayr manzūm* was not the bearer of meaning, rather than the meaning as such, one could not speak of it as being an indicator in its own right; one could not speak of *dalālat ghayr manzūm*, the indicatory functioning of the *ghayr manzūm*.

The term *manzūm*, we may say, describes the text considered as a bearer of explicit meaning, whereas the term *ghayr manzūm* describes the text considered as a bearer of implicit meaning. Every speaker strings together words and phrases that have been assigned, by the inventors of the *Lugha*, to particular meanings that are known within the linguistic community. His purpose in doing this is to form out of these meanings a larger composite meaning that will constitute the explicit meaning of his discourse, the meaning that he has *given expression to* through the words he has chosen. Behind this explicit meaning may be a hidden, implied meaning, which he cannot be said to have given expression to through the words he has chosen, but which must nonetheless be regarded as a meaning he has communicated to his hearer. Since the communication of this meaning lies outside the function of *manzūm*, as that term is used by Āmidī, the question arises: of what, then, is it the function? It is in order to answer this question that Āmidī must resort to the category of *ghayr manzūm*.

In speaking of the indicatory functioning of "the lines," the ordered language, of texts, we are speaking of what may be somewhat more felicitously called "signification." The *dalāla* of ordered language is grounded in the primordial assignment of vocables to meanings. As a result of this assignment, vocables *signify* meanings. The meanings they signify constitute, of course, explicit meanings. Although a speaker of English may perhaps on occasion speak of words as signifying implied meanings, this is not the ordinary practice. Words signify meanings by virtue of social convention. A speaker, in employing certain words, may imply something over and above what the words themselves signify. Normally we think of words as signifying and of speakers as implying, although in speaking of words as implying one remains within the limits of acceptable English usage. I doubt that one remains within those limits in speaking of speakers as signifying. Since *dalāla*, considered as a function of ordered language, constitutes signification, I shall in the following

pages use the term “signify” freely. When I turn later to Āmidī’s discussion of *dalāla* considered as a function of the language of a text viewed under its *ghayr manzūm* aspect or as a function of paratextual, or nontextual, indicators, I shall be obliged to refrain from using this term.

Explicit meaning (*sarīh*), it should be noted, is not necessarily clear meaning. I am using the term “explicit” in the loosest possible manner to include all meaning that is not implied, all meaning that can be regarded as carried by the words by virtue of their primordial assignment (*wadʿ*). Many words are, of course, ambiguous or vague, and thus ambiguity and vagueness can creep into explicit meaning. A rational speaker will seek to overcome this ambiguity and vagueness by supplying the necessary contextual clues to the intended meaning. Ideally the explicit meaning should be a crystal-clear embodiment of the intended meaning, whether by way of intrinsic clarity or by way of contextual clues. The whole objective of the speaker is to convey an intended meaning to the hearer. The meaning words carry within the *Lughā*—their ordinary literal meanings—is a means whereby this is possible. Where ambiguity or vagueness arises, the speaker must utilize the necessary contextual help. The intended meaning is not limited to the realm of explicit meaning, although it will exist first at the level of explicit meaning before it can arise at the level of implicit meaning.

Of the various topics that Āmidī must deal with in his discussions of the indicatory—that is to say, significatory—functioning of the ordered language of texts, two receive the lion’s share of attention: the imperative form of the verb (*siḡhat al-amr*) and the general expression (*al-ʿāmm*). The latter receives by far the largest share of attention: Āmidī devotes over two hundred pages of the *Ihkām* (1914 edition) to it. To the subject of the imperative form of the verb—that is to say, the *ifʿal* (or *lā tafʿal*) form—he devotes approximately half that number of pages. We should not, however, judge the importance of a subject solely by the number of pages. From a theoretical point of view, the *ifʿal* form is as important to the science of jurisprudence as the general expression. In Āmidī’s order of treatment, it comes first, and I shall adhere to that order.

The reason for the importance of the *ifʿal* form becomes apparent upon a moment’s reflection. We have noted that according to the generally accepted view among Muslims the law of God for the most part is not given to man in the form of precise statements of the form “X is obligatory,” “X is forbidden,” and so forth. What is given is a body of texts containing much less precise language. Among the various linguistic forms that appear in these texts the imperative form of the verb—the *ifʿal* (do!) or *lā tafʿal* (do not!) form—appears with especially great frequency. It is in fact ubiquitous, as the most

cursory skimming of the relevant Qur'ānic or Sunnaic texts readily reveals. It thus becomes a major resource for the jurispudent engaged in the task of articulating the law.

But how clearly does the imperative form of the verb signify the law? If the Legislator says, "Perform the *salāh*-prayer," without specifically saying that this performance is obligatory, may we take his words to mean that the performance of this prayer is in fact obligatory? Is not the imperative form of the verb ambiguous? If I say to someone, "Come to my house for dinner tonight," that person will hardly take my words to mean that I consider him under an obligation to come to my house; rather, he will clearly understand that I am inviting him to my house. But this understanding will come from the context, not from the words themselves. Can we accordingly say that in the case of "Perform the *salāh*-prayer" the imperative form does not signify on its own an obligation to perform the *salāh*-prayer but that this obligation must be known from something else other than the imperative form? This question and other related questions provoked a dialectic of great intensity among the Muslim jurispudents, as we shall see.

The *if'āl* form, together with its corollary the *lā taf'āl* form, was considered by most Muslim jurispudents to be the supreme means whereby the divine command (*amr* and *nahy*, the positive and the negative command) found expression in human language. And the divine command loomed large in Muslim religious thinking. The Prophet was, above all things, a transmitter (*mubligh*) of divine commands. The responsibility of implementing these commands (*al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*), thereby reordering the world in accordance with the divine plan, always rested heavily upon the Muslim conscience. But what could one make of the divine command? Again, human interpretation seemed inescapable. Were the divine commands coterminous with the divine law? Was the divine positive command (*amr*) tantamount to an imposition of obligation, the divine negative command (*nahy*) tantamount to an outright forbidding (*tahrīm*)? Yes, said some; no, said the majority.

Since the subject of the imperative form of the verb is closely linked to the subject of the command, Āmidī devotes some pages to the latter before delving into the issues pertaining to the former. Before considering what he says on the subject of the command, we would do well to review what Āmidī has said earlier in the *Ihkām* on this same subject.⁷ The Muslim jurispudents, he has told us, debated the question of whether recommended and neutral acts fall under the heading of "commanded acts" (*al-af'āl al-ma'mūr bihā*); the majority included recommended acts in this category, along with obligatory acts, while excluding neutral acts. Thus "commanded acts" embraced both

obligatory acts and recommended acts. Similarly, the majority regarded the category of “acts humans are commanded *not* to perform” (*al-af‘āl al-manhī ‘anhā*) is inclusive of both disapproved acts and forbidden (*muharram*) acts. Thus the sense of “command” (*amr, nahy*) was weakened so as to include both divine postures that entailed blame or censure (*dhamm*) in the event of noncompliance and divine postures that left noncompliance blameless. The Muslim jurists must have accustomed themselves to this weakened sense of *amr* and *nahy*. English speakers will find this weakened sense of “command” strange. To spare the reader this awkwardness I could, of course, use the Arabic terms *amr* and *nahy* throughout this discussion. However, since for the Arabic speaker unaccustomed to the usage of the Muslim jurists the weakening of the sense of *amr* and *nahy* can likewise seem strange, I shall prefer to make my reader more aware of the stretching of usage behind the jurists’ use of these terms by employing the English terms “positive command” and “negative command.”

I am choosing not to translate *nahy* as “prohibition” since this English word does not, I think, lend itself to a weakened sense as readily as does “command.” That, I realize, may be a perception which my reader does not share. For me, there is too close an affinity between “prohibiting” and “forbidding” (my rendering of the term *tahrim*) to allow the former but not the latter to have a weakened sense along with its stronger sense. There is not, I think, a comparable affinity between “command” and “imposition of obligation.” One may argue that for Arabic speakers there is an affinity between *nahy* and *tahrim* no less close than that between the English words “prohibition” and “forbidding” and that this does not, however, prevent Muslim jurists from drawing a distinction between *nahy* and *tahrim*, allowing the former to have a weakened sense but not the latter. The argument is valid. However, I am guided by my belief that for English speakers the positing of weaker and stronger senses of “command” will work better than a positing of weaker and stronger senses of “prohibition,” particularly since a term with a close affinity with “prohibition” (i.e., “forbidding”) is used in this discussion, whereas no term with an equally close affinity with “command” (for example, “order”) is used.

Since Āmidī devotes the larger part of his discussion to the positive command, devoting a relatively small number of pages at the end to the negative command, I shall do the same. Āmidī’s reason for the shorter treatment of the negative command is that much of what he says concerning the positive command can be applied to it as well. For the sake of simplicity, I shall use the word “command” generally to refer to the positive command. Only in discussing the negative command, later in the chapter, will I revive the contrasting qualifications “positive” and “negative.”

Āmidī's discussion of commands is concerned with four principal questions: whether the word "command" (*amr*) has two literal meanings or just one;⁸ how the command, considered as a particular category of speech, is to be defined; whether there is a linguistic form that signifies the command as its sole literal meaning; and what the full import of this form (which turns out to be the *ifʿal* form) is. The third question, it should be noted, could be asked only if the second was answered in a certain way, that is to say, only if the command was defined in a manner that placed it within the realm of "internal speech" (*kalām nafsī*), of meaning. It is under the rubric of the last question that Āmidī places the bulk of the controversies relating to the *ifʿal* form.

In turning to Āmidī's discussion of the first question,⁹ we soon find that what the discussion tries to come to grips with is the fact that the word "command" is used in two different senses. It can be used with reference either to a particular kind of speech (*qism min aqsām al-kalām*, more literally, "one of the components of speech") or to a particular kind of act—something one *does* when one employs the type of speech in question. The latter is what one has in mind when one speaks, for example, of a king as commanding his subjects to pay taxes. (Āmidī is not, incidentally, concerned in this context with the meaning of "matter, affair" that the Arabic word *amr* frequently has, which is represented by a distinct plural form, *umūr*. He is concerned only with *amr* as a correlate of the plural form *awāmir*.) Āmidī tells us that the jurists agreed that the first of these two senses—command considered as a certain kind of speech—was a literal meaning of the word "command." Disagreement arose over the second sense: some said that it, too, was a literal meaning, while others insisted that it was nonliteral such that the word should be regarded as a *majāz*-expression in relation to it. Since this issue has, in my estimation, no far-reaching implications for Islamic theoretical jurisprudence, I shall not devote further space to it. Command as act has little relevance for the jurisprudence we are dealing with in this study; it is rather the command as a type of speech that is at the center of attention, for this is what appears in the texts in which the indicators of the divine law are to be discovered.

The second of Āmidī's four questions is more germane to our study: how the command, considered as a category of speech, is to be more precisely defined.¹⁰ Here the issue of what constitutes speech acquires relevance. Muslim thinkers differed, it should be remembered, as to whether speech is an entirely physical, or phonic, phenomenon: some (mainly Muʿtazilis) insisted that it was, whereas others posited a duality of external (phonic) and internal (mental) speech, of *kalām al-lisān* and *kalām al-nafs*. Those Muʿtazilis who rejected the notion of internal speech made every effort to confine the

command to the realm of phonic speech. Accordingly, they sought to identify the command with a linguistic form, the imperative form of the verb, that is to say, the *ifʿal* form. The command was thus, in their view, nothing more nor less than this form. By so defining the command, these Muʿtazilis were able to keep the divine command, along with the rest of the divine speech, within the realm of divine acts (as opposed to divine attributes). This is not to say that the command per se was in their view a divine act. We are not here dealing with the command as act referred to above. It is not a divine command as act that the Muʿtazilis had in mind but rather a divine *creation* of a command as type of speech. All divine acts were, for Muslim theologians generally, by definition acts of creation. God's speech was understood by the Muʿtazilis to lie within the realm of divine acts in the sense that God created linguistic forms, such as the *ifʿal* form, to which he made the Angel privy and which have since appeared on the tongues of the Prophet and of others. Only insofar as God created the *ifʿal* form upon angelic or human tongues could he be regarded as commanding.

The problem with identifying the command with the *ifʿal* form, according to Āmidī, is that there are innumerable instances in ordinary usage when this form clearly does not represent a command. Such instances may be found in the Qurʾān itself. For example, "Do what you will" (41:40) is clearly not a command but a warning: God is saying in effect, "Do what you will, and see what befalls you." Similarly, "Go hunting" (5:2), "Call to witness" (4:15), "Eat of that which God has provided for you" (5:88), and "Enter them in peace" (15:45, 50:34) do not constitute commands; in the first God is granting permission, in the second he is affording guidance, in the third he is showing favor, and in the fourth he is bestowing honor. One need not be given these examples to be convinced of Āmidī's point: one has only to reflect on common utterances such as "Come to my house for dinner" to realize that the imperative form of a verb does not necessarily represent a command. On this, according to Āmidī, all agree.

The above Qurʾānic examples show that one who is clearly sovereign over others—in this instance, God—may employ the imperative form of the verb without giving rise to a command. To this type of situation we must add, says Āmidī, the innumerable situations in which an inferior uses this form in addressing his superior. In *no* case where the form is so used can it constitute a command. This means that the form does not constitute a command in and of itself; whether it is or is not a command depends on the social relationship of addresser and addressee.

Some Muʿtazilis, aware of the problems entailed in an unqualified identification of the command with the imperative form of the verb, modified the

basic Muʿtazilī definition in an attempt to overcome these problems. According to one such modified definition, the command was the imperative form of the verb unaccompanied by a contextual clue indicating that the form constituted something other than a command (for example, a warning, granting of permission, etc.). According to another, the command was the imperative form of the verb that satisfied three conditions: that the speaker have the intention to produce the form, that he intend to signify a command by means of it, and that he intend that the command be obeyed. (The second condition, by including a reference to command as *significatum*, is obviously inconsistent with the spirit of the definition.)

I shall not bother to repeat Āmidī's recapitulation of the justifications given for these definitions, since Āmidī makes short work of them by calling attention to a serious flaw they have in common: they include the definiendum (command) within the definiens, thus succumbing to the charge of circularity. Furthermore, all attempts to identify the command with a linguistic form make it impossible to provide a reasonable answer to the question "What does this form signify?"—a question that must have some answer, since all linguistic forms are presumed to signify something, having been established by the primordial inventor(s) of the *Lugha* for some sort of meaning. The common answer, which was that the imperative form of the verb signifies a command, became nonsensical, since it amounted to saying that the imperative form of the verb signified the imperative form of the verb. The only way out of this trap, argues Āmidī, is to abandon the notion that the command is to be identified with the *ifʿal* form as such and to treat the command as *the meaning of* that form. One could not say that the imperative form of the verb *constituted* a command and at the same time say that it *signified* a command. If one insisted on the latter, one had to abandon the former. By putting the command within the realm of meaning of a linguistic form, one still was able to keep the command within the realm of speech, thanks to the Ashʿarī notion of internal speech (*kalām al-naḥs*). The command thus remained a category of speech.

Even among the Muʿtazilis there was, Āmidī indicates, a reaction against the definition of the command as a linguistic form. Certain of them defined it as the willing of an act (*irādat al-fiʿl*). This definition allowed its proponents to speak of the imperative form of the verb as signifying a command. Nonetheless, it failed to pass muster with the Ashʿarīs, and Āmidī as a good Ashʿarī is constrained to reject it. Some Ashʿarīs tried to demolish it through the following argument. When a master has been reproved by a sultan for beating his slave too harshly, the master may try to justify his action by demonstrating the slave's incorrigibility in the sultan's presence. He will do this by

commanding the slave, with the sultan peering from behind a curtain, to do something in the expectation that the slave will disobey. Thus there will be a command but not the willing of the act specified in the command, since the occurrence of the act would result in the sultan's punishing the master.

Āmidī is uneasy with this argument, however, because he sees it as undermining a definition of command, common among Ash'arīs, that he himself favors. This definition, as we shall see, makes the command a calling for an act instead of a willing of an act. In the situation just described, the act that the master commanded can be regarded neither as willed by the master nor as called for by him ("calling for" here representing an inward disposition, as I shall explain shortly). Had Āmidī found a satisfactory definition of command that did not employ the term "calling for" (*talab*), he might have accepted this argument. But, as we shall see in a moment, he could not find such a definition and therefore cannot accept the argument. In any case, he does not need to. There is another argument that, in his view, demolishes the notion that a command is the willing of an act. All Muslims agree—note the appeal to a consensus—that when God foreknows that a man will die in unbelief the man is nonetheless subject to the command to believe. In other words, belief, in the case of that man, is commanded by God but not willed by him, for what is willed by God is identical with what is. Here, therefore, is a case that proves that a command is not the willing of an act.

God's willing, let us remember, is in Ash'arī theology his determination of what will or will not be. It is the precondition of all his creative activity. Before God lie infinite possibilities. He may create a world or not create one. If he creates a world, he may create any one of an infinite number of possible worlds. This singling out (*takhsīs*) of a particular possibility from among untold possibilities as fit to be brought into realization through his creative act is the meaning of his willing. Thus when disobedience to a divine command occurs, it occurs by the will of God. God's will is the ground or determinant of all existence. Given this understanding of the divine will, it is entirely clear why the definition of the command as the willing of an act could not long endure.

A question of great significance emerges here. If God's commanding of human acts is not to be identified with his willing of those acts, is it then incorrect, from the point of view of Ash'arī theology, to speak of the divine law—which, let us remember, is in some sense rooted in the divine commands—as an expression of God's will, as is so often done? The answer depends, I think, on how we understand the statement "Law is an expression of God's will." If we understand it in the way it is frequently understood in Western religious thinking, then it seems to me that the statement is incorrect from the point

of view of Ash'arī theology. For when Westerners, especially those who stand within the Judeo-Christian tradition, say that a given law—say, the law of Moses—is an expression of God's will, do they not very often mean that the law in question represents what God wills *in the way of human behavior or acts*? Do we not often hear in sermons or devotional literature of God's having a will for human lives, one embodied in commandments? If, on the other hand, one understands the statement "Law is an expression of God's will," to mean that law *exists* because he wills that it exist, then the statement is certainly correct from the point of view of Ash'arī theology.

One can refine this idea a bit by stating that God wills that certain acts be commanded without necessarily willing that the acts occur. In fact, considering that Ash'arī theology subscribes to a divine command theory of morality, this refinement can be carried even further by our saying that God wills that we ought to act in a certain way without necessarily willing that we actually so act, or that God wills that certain acts be obligatory or recommended without necessarily willing that these obligatory or recommended acts actually occur (or that God wills that certain acts be disapproved or forbidden without necessarily willing that these disapproved or forbidden acts *not* occur).

But how, then, is the concept of a command to be understood and defined? The strong penchant of Muslim jurists for definition of fundamental concepts required that some answer be given; the question could not simply be dismissed. As Āmidī makes clear, it became common among Ash'arīs, wishing as they did to avoid the Mu'tazilī definition of command as a linguistic form or as the willing of an act, to define command as the calling for an act (*talab al-fi'l*). "Calling for" represents my attempt to translate *talab*. It admittedly does not do full justice to the Arabic term, but after having struggled a great deal with this term I have concluded that "calling for" is better than any alternative that has come to my mind. At least one other medieval Muslim author in fact uses *talab* interchangeably with *istid'ā*, which is clearly translatable as "calling for."¹¹ It is important to understand that the calling for of which I am speaking is not a vocal calling, a calling out loud. It is rather a mental disposition that finds expression in vocal language, a part, in other words, of internal speech (*kalām al-nafs*). The Ash'arīs decidedly did not wish to place *talab al-fi'l* in the realm of linguistic forms: they chose to define command in terms of it precisely because it did not belong to that realm. The word "command," too, let us bear in mind, is suggestive of a vocal commanding. For the Ash'arīs, however, it belongs most definitely to the realm of mind, of internal speech.

Āmidī makes the translation of *talab* even more problematic by his response to an objection to the definition of command as *talab al-fi'l*. The objection is that *talab* must be something on the order of willing, for if it is

not then it is beyond conception; and a definition of command is useless if it employs a term that has no conceptualizable meaning. On the other hand, if one concedes that *talab al-fi'l* is indeed something on the order of willing, then one has, in defining command as *talab al-fi'l*, in effect adopted the definition of the Mu'tazilis.

Āmidī's reply is a masterpiece of dialectical subtlety. All men of reason, he argues, agree that the command is one of the basic categories of speech and that it actually exists. But it is impossible, he continues, to define command either as a linguistic form or as the willing of an act, for reasons that have been given. Yet the command must be defined in terms of something. The term *talab* is meant to refer to something that is neither a linguistic form nor the willing of an act. If the dissociation of this something from the willing of an act creates some puzzlement over its nature, this does not gainsay its validity as a definiens. Therefore, the dispute turns out to be essentially terminological. It is agreed that the command exists and that it is definable in terms of something. The dispute is over what to call this something, whatever it is; or, rather, it is over whether or not this something should be called *talab*. Āmidī—along with many other Ash'arīs—is convinced that no better term presents itself.

We should not fail to appreciate the cogency of Āmidī's thinking, despite the vagueness surrounding the term *talab*. Muslim dialecticians characteristically set up categories by means of the *via negativa*. If one can say of something that it is not this or that, one has created a category for it. Conceptualization of some sort has occurred. *Talab* does have a meaning after all. But, alas, it is still difficult to translate. In what follows I shall continue to adhere to my earlier practice of translating it as "calling for," on the understanding that the reader will keep in mind the qualifications I have made.

But the command cannot, according to Āmidī, be defined simply as the calling for an act. One further element must be added to the definiens, the phrase "from a posture of superiority" (*min jihat al-isti'lā'*). For the definition of the command as merely the calling for an act raises the same problem (noted above) as the definition of the command as a linguistic form: a person may call for an act on the part of a social peer or even of a superior. In such a situation, the calling for the act cannot be regarded as a command. The command thus requires a particular social hierarchy, one in which the speaker is superior to the addressee. The full correct definition of the command thus makes it *the calling for an act from a posture of superiority*.¹²

This additional element within the definiens was not the only one propounded among those Ash'arīs who sought to define the command as the calling for an act. Āmidī cites a definition according to which the command

is the calling for an act in such a manner that the one performing the act may be considered obedient. This definition implies the hierarchical relationship indicated by "from a posture of superiority"; however, Āmidī detects circularity in it. The circularity is not obvious but is present nonetheless and therefore damaging to the definition. He explains it as follows. Obedience is defined as compliance with a command. Since the concept of the command is part of the definition of obedience, then any definition of the command that includes the concept of obedience within the definiens is in effect including the definiendum within the definiens. The phrase "from a posture of superiority" avoids this problem, for the concept of command does not enter into the definition of superiority.

Āmidī cites other definitions of the command said to have been propounded within Ashʿarī circles that avoid altogether the concept of calling for an act. These definitions perhaps reflected a dissatisfaction with the definitions discussed above, or they were propounded before those definitions came into circulation among Ashʿarīs. Two of these definitions attempt to reduce the command to an assertion, to put the command in the realm of *khavar* as opposed to *inshāʾ*. According to one, the command is an assertion to the effect that a given act will be rewarded (or that the one performing it is deserving of a reward); according to the other, it is an assertion to the effect that the failure to perform a given act will be punished. The common thread running through these definitions is the notion of a sanction: the command is, in both definitions, a sanction-specifying assertion.

Notwithstanding the high degree of intellectual sophistication that underlay these definitions, they present a serious problem that, in the end, gives the advantage to the definition of the command propounded by Āmidī and (apparently) the majority of Ashʿarīs. To be precise: by reducing the command to an assertion, they imply that a command is subject to evaluation as true or false. This is, of course, nonsense: no one would ever say of a command that it is true or false. Furthermore, the propounders of these definitions violate a basic principle of Arabic linguistic science, according to which the command belongs to the realm of nonassertoric speech (*inshāʾ*), as opposed to assertoric speech (*khavar*). In fact, since the command is the most common of the subcategories of nonassertoric speech, the transfer of it into the realm of assertoric speech undermines the distinction itself. There is also a theological problem with this approach to the definition of the command. If a command is an assertion, subject to evaluation as true or false, to the effect that an act will be rewarded or that failure to perform it will be punished, then God is required to reward acts that he has commanded or punish failure to perform

such acts so as to preserve the truthfulness of his commands. But it is a basic tenet of Ash'arī theology that God is subject to no such requirement.

Āmidī cites a third definition propounded among Ash'arīs that avoids the concept of calling for an act. The command is, in this definition, speech that demands obedience on the part of the one commanded to do that which is commanded.¹³ "Speech" (here *qawl* rather than *kalām*) includes both assertoric and nonassertoric speech. Although this definition of the command, according to Āmidī, enjoyed a high degree of popularity among the Ash'arīs, having been propounded by such luminaries as Bāqillānī, Juwaynī, and Ghazālī, Āmidī finds it unacceptable. The reader will no doubt quickly guess the reason for his dissatisfaction: by employing the term "commanded" twice it includes the definiendum within the definiens in a most obvious way—not to mention the fact that it employs the term "obedience," whose definition includes the concept of the command. The definition under consideration is, in short, circular.

The third major topic pertaining to the subject of commands is, as we have noted, the question of whether there is a linguistic form that signifies the command as its sole literary meaning, or, to follow Āmidī's own language more closely, whether there is in the *Lughā* a form that is peculiar to the command and signifies the command as its literal meaning and not anything else.¹⁴ ("Peculiar to the command" seems to be synonymous with "signifies the command as its literal meaning and not anything else.") This question presupposes that the question of how the command is to be defined has been answered in a certain way. It presupposes, in other words, that the command is not to be identified *simpliciter* with a linguistic form but rather a meaning, a mental content. Given this presupposition, it becomes possible to ask whether there is a linguistic form that signifies this particular meaning and no other meaning as its literal meaning. We are thus not dealing here with the question of what the word "command" (*amr*) signifies; that has already been dealt with and Āmidī has informed us that most scholars regard the word as signifying univocally a category of speech, which they understand to be a mental content. What we are dealing with now is the question of whether there is a linguistic form that signifies the command so understood and nothing else as its literal meaning.

To speak of any form as signifying a given meaning as its sole literal meaning is, as we have previously learned, tantamount to saying that the form is *zāhir*, such that the meaning may be regarded *ab initio* as the probable (or apparent) intended meaning. Thus the question presently before us boils down to a question of whether there is in the *Lughā* a *zāhir* signifier of the

command, that is to say, a form that by virtue of its univocal signification of a command renders the intention of a command *ab initio* probable.

As we examine the discussion that follows Āmidī's statement of this question,¹⁵ which is surprisingly brief, we soon find that it is hardly a discussion of the question as such. The real discussion of this question is, we eventually discover, placed under the heading of the fourth topic. What Āmidī is concerned to do in the present discussion is to determine whether or not the question of whether there is a linguistic form that signifies the command univocally may be properly raised. Some Ash'arīs, it appears, considered it to be a pseudo-question. Āmidī is sure that it is a very real one.

The debate over this question began, according to some, in the time of Ash'arī himself. He and certain of his followers allegedly denied that there was any linguistic form that signified the command univocally, while all others adopted the opposite view. However, prominent later Ash'arīs—Juwaynī and Ghazālī—doubted the accuracy of this story. There is, they reasoned, clearly such a linguistic form, namely, the words "I have commanded you, and you are under that command" (*amartuka wa-anta ma'mūr*). Ash'arī could not have been unaware of this and therefore could not have taken the position that there is no such form. Consequently, the debate never took place.

In Āmidī's view, however, this way of thinking overlooks the fact that a real debate did take place and that what was at issue in this debate was the imperative form of the verb, the *if'al* form. The phrase "I have commanded you, and you are under that command" was irrelevant to that debate. Furthermore, while it is true that this phrase signifies a command and no other meaning, it belongs to a special category of speech marked by the nonassertoric use of an assertoric form (*khābar*). The debate over the *if'al* form is in essence an inquiry into whether there is in the Lugha a *nonassertoric* form that signifies univocally a command, the *if'al* form being the only truly nonassertoric form that may even be considered for such a role. More precisely stated, the issue is whether the imperative form of the verb (*if'al*) is a *zāhir* signifier of the command. There is no escaping this issue, says Āmidī, for the *if'al* form has many different usages, which he will discuss presently, and it is therefore not a foregone conclusion that the form signifies the command *univocally*. Full deliberation over this issue, as I have noted, comes some pages later in the *Ihkām*. In the present context Āmidī is concerned primarily to establish that the issue of whether there is a *zāhir* signifier of the command in the Lugha is a very real one since it has to do with the *if'al* form and that it cannot therefore be explained out of existence by citing the phrase "I have commanded you, and you are under a command." His position on this issue—and that of

the majority of Muslim jurists—is, as we shall see, that the *if^cal* form is indeed a *zāhir* signifier of the command.

We may now turn to Āmidī's discussion of the fourth topic pertaining to commands: the import of the imperative form of the verb, that is to say, the *if^cal* form (*muqtadā ṣiḡhat al-amr*).¹⁶ By calling the *if^cal* form *ṣiḡhat al-amr* ("the form of the command"), Āmidī may seem to be presupposing a principle he has not yet proven (that the *if^cal* is a *zāhir* signifier of the command). However, it must be understood that "form of the command" was a standard designation for the *if^cal* form among Muslim scholars and that in using it Āmidī does not mean to beg the question he is about to deal with. "Form of the command" corresponds to "imperative form" as used by grammarians with reference to a particular form of the verb.

In the ensuing discussion Āmidī deals with twelve issues, which may be stated as follows:

1. Whether the *if^cal* form signifies a single literal meaning (such that it may be regarded as a *zāhir* signifier) or a plurality of literal meanings and, if the former, what constitutes that single literal meaning. (It may be briefly noted here that Āmidī himself adopts the view that the *if^cal* form has a single literal meaning and that this meaning is the calling for an act [i.e., the command]. The *if^cal* form is, in other words, a *zāhir* signifier of a command.)
2. Whether the *if^cal* form signifies a literal meaning or meanings more precise than the calling for an act, viz. imposition of obligation, recommendation, or both of these. (Those who held that the *if^cal* form signified either imposition of obligation or recommendation as its sole literal meaning were in effect affirming that the form was a *zāhir* signifier of this meaning.)
3. Whether the *if^cal* form signifies, as part of its literal sense, that the act called for is to be performed repeatedly throughout one's lifetime or once only.
4. Whether the *if^cal* form, when conjoined with a condition or an attribute (to be explained later), signifies that the act called for is to be performed repeatedly.
5. Whether the *if^cal* form signifies, as part of its literal sense, that the act called for is to be performed immediately without delay.
6. Whether the *if^cal* form, in signifying as its literal meaning a calling for an act, also signifies as part of that meaning a calling for the nonperformance of all the contraries of that act.
7. Whether compliance with a command constitutes *ijzā'* (to be explained).

8. Whether the *if^cal* form, when preceded by a prohibition, signifies imposition of obligation.
9. Whether the *if^cal* form signifies a calling for a compensatory performance of an act in the event that the act is, in the first instance, performed in a faulty manner.
10. Whether the *if^cal* form, when it is used to call upon the addressee to command others (as in "Command the young in your custody to perform the prayer"), places a charge upon those others or just upon the addressee.
11. Whether the *if^cal* form can signify a calling for a general category of acts as opposed to a particular, precisely defined act.
12. Whether the appearance of the *if^cal* form twice in succession without an intervening conjunction is indicative of the existence of two separate commands.

The reader should be aware that I have taken considerable liberty in my phrasing of these issues, departing at points rather sharply from Āmidī's own phrasing in Arabic. I have done so largely in order to maintain, for the reader's benefit, a consistency that is absent from the original Arabic. Āmidī alternates freely, for example, between references to the *if^cal* form (*sīghat if^cal*) and references simply to "the command" (*al-amr*). In fact, the latter are, on the whole, more common. I shall take *al-amr* to mean *sīghat al-amr*, which, as we have noted, is synonymous with *sīghat if^cal*. When Āmidī speaks, for example, of "the command stripped of its context" (*al-amr al-^carī min al-qarā'in*), he seems to have in mind, not the command as such (which, let us remember, is for him a mental entity), but rather the linguistic form that signifies the command, the *if^cal* form. On the other hand, the *if^cal* form and the command are for Āmidī but two sides of the same semiotic coin, and one can phrase many of the issues about to be considered in terms of one or the other side. One can, for example, ask whether the *if^cal* form signifies, as part of its sole literal meaning, that the act called for is to be performed repeatedly throughout one's lifetime or once only, or, alternatively, one can ask whether the command—the calling for an act—entails a calling for repeated performance or a single performance (that is, one can phrase the question in terms of what the signifier signifies or in terms of what is entailed in the signified). I shall place the focus on the side of the signifier, the *if^cal* form, in contrast to Āmidī, who shifts back and forth between the two sides of the equation.

The phrase *al-amru muqtadin* (or *al-amru yaqtadī*, both meaning "the command calls for"), which appears frequently in Āmidī's discussion, should, I think, be understood in the context of the phrase *sīghatu if^cal zāhiratun fi'l-talabi wa'l-iqtidā'i*, "the *if^cal* form is a *zāhir* signifier of *talab* and *iqtidā'*", which

appears less frequently but is nonetheless enormously significant. Clearly, “the command calls for *x*” translates in Āmidī’s thinking into “the *ifʿal* form signifies a calling for *x* as its sole literal meaning.” (Āmidī frequently conjoins *iqtidāʾ* with *talab*, both translatable as “a calling for.”) The phrase *muqtadā sīghat al-amr*, which as a heading I have translated as “the import of the *ifʿal* form,” can accordingly be more exactly translated as “what is called for by the *ifʿal* form,” and this can perhaps without injustice to Āmidī’s intent be further expanded into “what is entailed in the calling for (an act) which the *ifʿal* form signifies as its sole literal meaning.”

It is instructive to take note of the Arabic phrasing Āmidī uses to state the first of the twelve issues mentioned above: *mādhā sīghatu ʿl-amri haqīqatun fihi idhā waradat mutalaqatan ʿariyatan ʿani ʿl-qarāʾini*.¹⁷ A close translation might be as follows: what the *ifʿal* form is a *haqīqa*-expression for when it occurs by itself, stripped of contextual clues. As was noted in chapter 3 of Part I⁸—although Muslim scholars considered expressions to be *haqīqa* or *majāz* by virtue of usage in concrete situations—this did not prevent them from speaking in a general way of an expression’s being *haqīqa* or *majāz*. To say that a word or form was *haqīqa* in respect to a given meaning in this general way was tantamount to saying that it signified this meaning as its literal meaning. To know that the word or form was in fact *haqīqa* in a particular instance and not *majāz* required that the larger context be searched to establish the absence of any clue indicating a *majāz* status. But on the general level a word or form was both *haqīqa* and *majāz*: “lion,” for example, was *haqīqa* in respect to the predatory feline and *majāz* in respect to the fearless man.

Thus to ask what the *ifʿal* form is *haqīqa* for is to ask what it signifies as its literal meaning (its *mawdūʿ lahu*), for a word or form cannot be *haqīqa* in relation to a nonliteral meaning. The phrase “by itself, stripped of contextual clues” seems to explicate what is already implicit in the phrase “what the *ifʿal* form is *haqīqa* for.” To say that a meaning is the literal meaning of a word or form is to say that this meaning will occur immediately to the mind of the hearer upon hearing the word or form in isolation, stripped of contextual clues. A word or phrase can, of course, be a *haqīqa*-expression for a given meaning without being a *zāhir* signifier of that meaning, for it may be a *haqīqa*-expression for some other meaning or meanings as well, making it ambiguous and thus not *zāhir*. On the other hand, if one says that a word or phrase is a *haqīqa*-expression for a given meaning *and not for any other meaning* (*haqīqa fī-kadhā lā fī-mā ʿadāhu*), as is often done in the *Ihkām*, one is in effect saying that the word or phrase is *zāhir* in respect to that meaning.

A word of explanation is in order concerning the reference to a *linguistic form* as a *haqīqa*-expression and bearer of a literal meaning. In my earlier

discussion of the concept of *wadʿ* (the primordial assignment of vocables to their meanings)¹⁹ I did not take note of the habit of Muslim jurists and philologists of treating the form of certain words as a bearer of meaning distinct from the meaning carried by those consonants that constituted a word's "root," the so-called radicals. Verbs in the imperative mood represent an important example of this type of word. We may take, for instance, the word *idrāb* "strike!": the radicals *d r b* signify the act of striking. These radicals represent material with which a variety of distinct words can be constructed through a superimposition of various forms. The word *idrāb* is one of these. Other words that may be thus constructed are *daraba*, *yadrabu*, *dārib*, and *madrūb*. In each case, the form signifies an element of meaning over and above that carried by the radicals. If in the case of *idrāb* the form signifies a calling for an act, then form and radicals together signify a calling for a striking. Since form and radicals are independent bearers of meaning, each must have been assigned to its meaning independently of the other.

Later on, Muslim scholars who specialized in the study of *wadʿ* came to draw a distinction between *wadʿ nawʿī*, "generic *wadʿ*," and *wadʿ shakhsī*, "specific *wadʿ*,"²⁰ the former being a designation for the assignment of forms to meanings, the latter being a designation for the assignment of radicals to meanings. This duality in the assignment process did not apply to all words, but only to those words whose form and radicals were separate bearers of meaning. Such words comprise two primary classes: verbs and "derived nouns" (*al-asmāʾ al-mushtaqqā*). All other words—underived nouns and particles—were devoid of this duality and came into being as the result of a single primordial assignment. For example, the verbal noun *darb* (verbal nouns, incidentally, were included within the category of underived nouns) was believed to signify a single meaning, the simple act of striking: the form of the word added nothing to this meaning. Its meaning was thus identical to that of the radicals of a verb considered apart from its form. However, whereas the verbal noun could, as a union of radicals and form (neither of which carried meaning on its own), be uttered by a speaker, the radicals of a verb *qua* radicals (that is, the radicals as an entity distinct from the form) could not.

Since any form that carried a meaning distinct from the meaning of the radicals was presumed to have been originally assigned to a meaning independently of the assignment of the radicals, it made perfect sense to speak of a form as having its own literal meaning and as constituting, when used to convey this literal meaning, a *haqīqa*-expression or, when used to convey another meaning related to it, a *majāz*-expression.

Āmidī's own thinking about the *ifʿal* form, which underlies his entire discussion of the twelve above-mentioned issues, may be summarized as

follows. There are good reasons for regarding this form as signifying the calling for an act as its literal meaning (or, otherwise stated, there are good reasons for regarding this form as a *ḥaqīqa*-expression for the calling for an act). There are *not*, however, good reasons for regarding it as signifying anything beyond this simple idea of the calling for an act as its literal meaning or as part of its literal meaning. The *ifʿal* form is, in other words, a univocal and therefore a *zāhir* signifier of the calling for an act, not of anything more precise or complex than that. As Āmidī's discussion proceeds from issue to issue, we discover a tendency on his part to minimize as much as possible the role of the *ifʿal* form as indicator of the divine law and to maximize the role of the context. Whenever we encounter the form in a Qurʾānic, Sunnaic, or Ijmāʿic text, we can make one presumption as to its meaning and only one presumption—that it signifies the calling for an act. No further presumption beyond that is warranted.

Since Āmidī has defined the command as a calling for an act, it is clear that what he is really saying is that there are good reasons for regarding the *ifʿal* form as signifying a command as its literal sense and that there are *not* good reasons for regarding the *ifʿal* form as signifying anything beyond the command as its literal sense or as part of its literal sense. When we have before us in a text a verb in the imperative mood, we can make an *ab initio* presumption in favor of one thing and one thing only: the presence of a command. For all else we depend upon the context.

Throughout his discussion of the twelve above-mentioned issues Āmidī's principal task is to promote his point of view against the views of those jurists who sought to extract from the *ifʿal* form, taken apart from its context, more than the simple idea of a calling for an act, of a command. Some, for example, maintained that the form signifies imposition of obligation as its sole literal meaning, others that it signifies recommendation as that meaning. Both of these categories entail the notion of calling for an act but are more specific. Some maintained that the form signifies as part of its literal meaning that the act called for is to be performed repeatedly throughout one's lifetime, others that it signifies that it is to be performed once only. Some held that it signifies that the act called for is to be performed immediately without delay. According to Āmidī, these views, and others like them, sought to extract from the *ifʿal* form, taken apart from its context, more than was warranted.

One can readily appreciate why some jurists may have been inclined to extract as much from this all-important and frequently occurring form as possible. If the form could be regarded as a *zāhir* signifier, one that by virtue of its univocality warranted an *ab initio* presumption as to what constituted the meaning intended by the speaker, then the greater the specificity

of that meaning the easier was the task of the one engaged in the business of articulating the law. If the form signified nothing more specific than a calling for an act as its sole literal meaning, then the mujtahid was much more dependent upon the context; and, given the vastness of the context, the more he was dependent upon it the more difficult was his task. The mujtahid had always, of course, to check *ab initio* presumptions against the context, but the utilization of the context for this purpose was far less problematic than its utilization for the purpose of determining intended meaning without an *ab initio* presumption. If the mujtahid could make an *ab initio* presumption to the effect that what the speaker (God, the Prophet, or a spokesman for an Ijmā'ic consensus) intended was not merely a calling for an act but something more specific, such as an imposition of obligation along with a demand for immediate and repeated compliance throughout one's lifetime, then he had a great deal to start with; once he had combed the context and found no contextual evidence that overruled this presumption—no evidence, that is to say, of *ta'wīl*—he could proceed to articulate the law in accordance with it. If, on the other hand, the mujtahid could make no such *ab initio* presumption, then he had nothing to start with except a calling for an act, and all specifics beyond this general meaning had to be discovered from positive indicators in the context, which necessarily had to be something other than verbs in the imperative mood.

One can, I think, discern an affinity between the tendency to maximize the role of the *if^cal* form as a *zāhir* signifier and the tendency toward rigorism noted in earlier chapters in connection with issues such as the authority of the Ijmā' and the authority of the report of the trustworthy individual.²¹ What these tendencies have in common is an eagerness to make the divine law as accessible to the mujtahid as possible, thus reducing the sphere of margin of error that was necessarily entailed in all fallible human endeavor. There must always be fallible endeavor (*ijtihād*), of course; but the more its sphere of operation was reduced, the more Muslims could rise above their differing opinions and come into sure contact with the one law of the one God.

That the *if^cal* form signifies a calling for an act, or command, as its sole literal sense is the thesis that Āmidī seeks to establish in his discussion of the first of the twelve above-mentioned issues.²² That the *if^cal* form does not signify anything more specific than the simple idea of a calling for an act as its sole literal sense is a thesis that he seeks to establish in the discussion of the remaining issues. The first thesis, we discover, was, like the second, not unchallenged among Muslim jurists, and Āmidī is obliged to defend it. Before considering his arguments, some preliminary matters should be taken into account.

I have suggested that, in taking the position that the *ifʿal* form is a *zāhir* signifier of a calling for an act, Āmidī in effect affirms that it is a *zāhir* signifier of a command, for the command is, according to his definition, “the calling for an act from a posture of superiority.” He does not, admittedly, here include the phrase “from a posture of superiority.” If he said that the *ifʿal* form is a *zāhir* signifier of a calling for an act from a posture of superiority, then he would very clearly in effect be affirming that it is a *zāhir* signifier of a command. However, it seems to me that we have good reason to suppose that Āmidī in the present context regards the phrase “a calling for an act” as implying a posture of superiority. He is, after all, not here engaged in the business of definition, which requires that nothing be left implied but that every element in the definiens be explicitly stated. Where definition is not being pursued, implication may be quite acceptable. We may further note that he in any case occasionally juxtaposes with the word *talab* (the term for a calling for an act used in definitions and many other situations) the word *iqtidāʾ*. Although I have elected to translate the latter word also as “a calling for” (since “requiring” is suggestive of imposition of obligation, which must be reserved for *ījāb*), its sense is clearly stronger than that of *talab*. We may conjecture that Āmidī sensed that *talab*, stripped of the qualifier “from a posture of superiority,” was too weak and needed to be bolstered with a stronger term and for that reason added the word *iqtidāʾ*. This is, of course, only a conjecture and cannot be conclusively proven.

Before launching his discussion of the first issue, Āmidī deems it useful to provide his reader with a list of all those meanings that, according to a consensus of Muslim jurisprudents, the *ifʿal* form may have in actual usage, whether literal or nonliteral.

1. An imposition of obligation. Example: *aqimi ʿl-salāh*, “perform the *salāh*-prayer,” in Qurʾān 17:78.
2. A recommendation. Example: *kātibūhum*, “write it for them,” the reference being to a written promise of release from slavery, in Qurʾān 24:33.
3. An advising. Example: *istashhidū*, “call to witness,” in Qurʾān 4:15.
4. A rendering neutral. Example: *istādū*, “go hunting,” in Qurʾān 5:2.
5. A bestowal of favor. Example: *kulū mimā razaqakum allāh*, “eat of that which God has provided,” in Qurʾān 5:88.
6. A bestowal of honor. Example: *udkhulūhā bi-salām*, “enter them in peace,” in Qurʾān 15:45 and 50:34.
7. A warning. Example: *ʾamalū mā shiʾtum*, “do what you wish,” implying “and see what will befall you,” in Qurʾān 41:40.

8. An admonition. Example: *tamatta'ū*, "enjoy yourselves," with the same implication as in the example above, in Qur'ān 14:30.
9. A belittlement. Example: *kūnū qirda*, "be apes," in Qur'ān 2:65.
10. A disparagement. Example: *kūnū hijāra*, "be stones," in Qur'ān 17:50.
11. An insult. Example: *dhuq innaka anta 'l-ʿazīz*, "taste! indeed you were the mighty one," in Qur'ān 44:49.
12. Indifference. Example: *fa 'sburū aw lā tasburū*, "be patient, or do not be patient—it is all the same for you," in Qur'ān 52:16.
13. A supplication. Example: *aghfirli*, "have mercy on me," in Qur'ān 7:151 (etc.).
14. Desire. Āmidī cites an example from Arabic poetry.
15. Omnipotence. Example: *kun wa-yakūn*, "Be! and it is," a reference to God's creative activity, in Qur'ān 2:117 (etc.).

Āmidī's choice of Qur'ānic examples for all but one of these usages of the *ifʿal* form should not mislead us into thinking that the Muslim jurists were interested only in divine usage. Āmidī's solitary example from Arabic poetry shows us that this is not the case. The jurists were, of course, ultimately concerned to articulate the divine categorizations of human acts, but in dealing with linguistic issues that arose in the pursuit of this objective they were quite open to considering any specimens of normative usage, whether Qur'ānic or non-Qur'ānic. When Qur'ānic specimens were available, they naturally received special attention. The Qur'ān was, let us remember, considered to be a preeminent specimen of authentic Arabic; the divine speech could hardly be otherwise, particularly if it constituted a literary marvel, as was fervently believed. Therefore the Qur'ān had the twofold attraction of a source of understanding of the divine categorizations and a source of knowledge of Arabic usage.

Having listed the fifteen "meanings" of the *ifʿal* form, Āmidī turns to the question: which of these meanings are literal meanings of the *ifʿal* form and which are nonliteral meanings? (Where the *ifʿal* form signifies a nonliteral meaning it is, of course, being used as a *majāz*-expression.) According to Āmidī, Muslim jurists all agreed that certain of the above-mentioned meanings were definitely nonliteral, namely, "all the meanings except the calling for an act, warning, and rendering neutral" (*mā siwā 'l-talab wa'l-tahdīd wa'l-ibāha*). Difference of opinion arose with respect to these three exceptions. Some said that all three were literal meanings, thus making the *ifʿal* form a homonym (contrary to Āmidī's belief that it is not); others said that the rendering neutral of an act was alone the literal meaning and that all others were nonliteral; while still others said that the calling for an act (or command) was the sole literal meaning. The third view is, as we have observed,

Āmidī's. It and the second view have in common a belief that the *ifʿal* form is a *zāhir* signifier; they differ as to what constitutes the sole literal meaning by virtue of which it is a *zāhir* signifier

The reader will immediately notice that one of the three meanings that were the subject of this discussion—namely, the calling for an act—does not appear in Āmidī's list. We have earlier observed that he regards the calling for an act as a generic concept common to both the making obligatory of an act and the recommending of an act, and he points out in his subsequent discussion that it is also present in the advising of an act. He may therefore be regarded as implying that the jurists were in agreement on the non-literalness of all meanings of the *ifʿal* form imposition of obligation, recommendation, advising, warning, and permission, and that they differed with regard to these latter. However, he wishes for the moment to place the focus on the more general concept of the calling for an act and accordingly omits any mention of rendering obligatory, recommending, and advising. The reason for this omission is that there were clearly, judging from Āmidī's discussion as a whole, jurists (including himself) who were willing to regard the calling for an act (and thus, implicitly, the command) as the literal meaning of the *ifʿal* form but were not willing to regard the more specific concepts of rendering obligatory, recommending, and advising as literal meanings.

Āmidī's argument for regarding the *ifʿal* form as signifying a calling for an act as a literal as opposed to a nonliteral meaning runs as follows. If we hear someone say to another, "Do such-and-such" (*ifʿal kadhā*), without there being any contextual clues that might affect our understanding of the meaning, we immediately understand the meaning to be a calling for an act (*talab al-ʿl wa-iqtidāʿuh*; note Āmidī's juxtaposition here of *talab* and *iqtidāʿ*). This meaning takes precedence over (*yasbuq*)—that is to say, comes to our minds prior to—any other meaning, such as warning or rendering neutral. This being the case, the calling for an act is clearly the literal meaning of the *ifʿal* form. And since it alone, and no other meaning, comes to our minds, the *ifʿal* form acquires the status of a *zāhir* signifier. Āmidī is here applying a test of literalness that appears throughout the *Ihkām*: if a vocable triggers a given meaning in the mind of the addressee, that meaning may be considered a literal meaning of the vocable. A literal meaning is a meaning that, as a result of internalization of the *Lughā*, arises immediately (*mubādaratan*)—that is to say, is triggered—in the mind of the individual upon hearing a vocable.

But, objects the adversary, this triggering effect of the *ifʿal* form could possibly be the result of postprimordial convention (*ʿurf*, a subject discussed in chapter 3 of Part I²³) and not the result of a primordial assignment (*wadʿ*) to a meaning. *ʿurf*-based literal meanings were of relatively little interest to

Muslim scholars seeking to formulate the divine law on the basis of textual data. The sense of the texts was always to be determined first and foremost with reference to the primordial *wadʿ*. Āmidī responds to the objection with an appeal to the principiality of the *wadʿ*: in the absence of evidence that the triggering effect of the *ifʿal* form is due to postprimordial convention, we must assume it to be due to the primordial assignment.

As we turn to Āmidī's discussion of the second issue,²⁴ a question arises concerning its relationship to his discussion of the first issue. Before considering this question, we should first take notice of what the second issue entails. Āmidī begins his discussion with the following statement: "Once it has become established that the *ifʿal* form is a *zāhir* [signifier] of the calling for an act [we may proceed to classify called-for acts as follows]: a called-for act can only be an act whose performance has priority [*rājih*] over nonperformance. Now if nonperformance is banned [*mumtanaʿ*], the act constitutes an *obligatory* act. If nonperformance is not banned, then the priority of performance will be due either to some benefit in the hereafter or to some benefit in the present world. In the former case, the act constitutes a *recommended* act; in the latter case, an *advisable* act." The concept of *advice* (*irshād*: more literally, "guidance") does not reappear in Āmidī's discussion, and we may accordingly henceforth disregard it. The categories that become germane to the ensuing discussion are giving priority to the performance of an act over nonperformance, imposition of obligation, and recommendation.

Having presented us with the above classification (which resembles classifications considered earlier in this book), Āmidī then notes that Muslim jurists are divided into the following five camps:

1. Some—whom Āmidī identifies as "the Shīʿīs"—hold that the *ifʿal* form signifies *both* imposition of obligation and recommendation as literal meanings, or, in other words, that it is a homonym.
2. Some hold that the *ifʿal* form signifies as its literal meaning an idea that is present in both the notion of imposition of obligation and the notion of recommendation, namely, the priority of the performance of an act over nonperformance. The form is not, in other words, a homonym, since neither imposition of obligation nor recommendation per se is to be counted as a literal meaning; it is, rather, a *zāhir* signifier, its sole literal meaning being the priority of performance over nonperformance. It should be noted that Āmidī seems to equate the concept of the priority of performance over nonperformance with the concept of calling for an act. This is evident from his statement quoted above: "A called-for act can only be an act whose performance has priority over nonperformance."²⁵ It appears, therefore, that this second group of

jurisprudents is saying in effect that the *if^ʿal* form is a *zāhir* signifier of the calling for an act, not of a more specific meaning.

3. Some hold that the *if^ʿal* form has imposition of obligation only as its literal meaning and that recommendation and all other meanings are to be counted as nonliteral meanings. The *if^ʿal* form is, in other words, a *zāhir* signifier of imposition of obligation.
4. Some hold that the *if^ʿal* form has recommendation only as its literal meaning and that imposition of obligation and all other meanings are to be counted as nonliteral meanings. In other words, the *if^ʿal* form is a *zāhir* signifier of recommendation.
5. Finally, some hold that it is not possible to determine conclusively the precise literal meaning of the *if^ʿal* form and that one must accordingly suspend judgment on this matter.

As we delve into the discussion that follows Āmidī's listing of these five positions, we soon find ourselves puzzling over its relationship to the discussion that has preceded it. The subject of the previous discussion has been the issue of what constitutes the literal meaning of the *if^ʿal* form. Āmidī has divided Muslim opinion on that issue into three camps and has taken the side of that camp that affirms that the *if^ʿal* form has as its literal meaning the calling for an act. Now he seems to be continuing to discuss the same issue and to be saying that among those who hold that the *if^ʿal* form has as its literal meaning the calling for an act there is a difference of opinion as to whether this literal meaning can be *even more precisely* determined. Among the five groups that emerge in this *subsequent* discussion, the second (in the order of Āmidī's presentation) seems to be answering this question in the negative, the first, third, and fourth in the affirmative, while the fifth group seems to be suspending judgment. The third and fourth groups differ from the first in affirming that the more precise literal meaning remains the sole literal meaning such that the *if^ʿal* form falls into the category of the *zāhir* signifier. For the second group, clearly, the calling for an act is per se the literal meaning of the *if^ʿal* form: the literal meaning is not more precise than that. For the first, third, and fourth groups, the calling for an act is a general notion *included in* the full literal meaning; it is not in itself the full literal meaning, which is more precise.

The fifth group mentioned by Āmidī—those who suspend judgment—appears to be saying: the *if^ʿal* form signifies the calling for an act as its literal meaning in the sense that this is the only meaning for which there is a convincing argument for regarding it as the literal meaning of the form. There are, in other words, no convincing arguments for regarding imposition of obligation or recommendation as literal meanings in their own right, and we

are therefore left with only this more general idea as a viable literal meaning for the *if^cal* form. There is an obvious affinity between this point of view and that of the second group. If there is a difference between the two points of view, it probably is that one (the second group) affirms dogmatically that the *if^cal* form does not have either imposition of obligation or recommendation as its literal meaning, suggesting that there are compelling reasons for making this affirmation, while the other (the fifth group) refrains from taking this dogmatic posture, preferring rather the noncommittal position of being unwilling to affirm dogmatically that the *if^cal* has either imposition of obligation or recommendation as its literal meaning because of a *lack* of known compelling arguments in favor of such an affirmation.

It is extremely curious that Āmidī nowhere in his discussion attempts to refute the position of the second group. There is consequently a degree of ambiguity in the noncommittal stance of the fifth group (among whom Āmidī includes himself). Is this group adopting this stance toward the second group as well as the other three (the first, third, and fourth), or is it adopting this stance only toward the other three? If the former is the case, why does Āmidī not review the arguments for the second group's position and present a critique of those arguments, as he does with the positions of the other groups? I suggest that the latter is the case and that we should see Āmidī's mentioning the position of the second group as a harking back to the first discussion and as essentially extraneous to the second discussion. In the first discussion he has already presented the arguments for regarding the *if^cal* form as signifying the calling for an act (a notion equivalent, I have suggested, to the notion of giving priority to the performance of an act over nonperformance) as its sole literal meaning. There is therefore no need for him to review them in the second discussion, particularly as he considers those arguments to be valid and has no intention of refuting them. The dialectic that unfolds in the second discussion thus entails four, not five, actually competing positions.

The full import of these positions may perhaps be better understood with reference to an example. The Qur'ān says, "Perform the *salāh*-prayer" (*aqimi 'l-salāh*, 17:78, etc.). The *salāh*-prayer is, of course, counted among the pillars of Islam, the fundamental acts of worship. It is therefore unanimously considered to be obligatory. But how do we know it is obligatory? The simplistic answer is: from the words themselves, especially from the imperative form *aqim*. God says plainly, "Perform the *salāh*-prayer": what more do we need? This simplistic attitude existed, it seems, within some circles of Muslims, perhaps the less reflective of those who joined the early Hanbalī movement. It allows one to find a certain security in the imperative form of the verb. Imperatives could seem to the unreflective a crystal-clear expression of

the divine law. For the more reflective, however, the matter could not be so. Serious jurists, even among Hanbalis, were constrained to acknowledge that the *ifʿal* form may signify meanings other than imposition of obligation. This was obvious from the most superficial reflection upon actual usage. Thus we do not find among the Muslim jurists any who contend that the *ifʿal* form signifies imposition of obligation as its sole *possible* meaning. Were this so, one would indeed find security in the single word. But the *Lughah* does not allow such security. It demands, rather, that one take the context into account.

Here it will be helpful to review briefly the role of the context in determining the intended meaning behind any particular vocable (a word, phrase, word-form, etc.). The mujtahid seeking to make such a determination always depends on the context, but in different ways. If a vocable has only one literal meaning, he must scan the context to see if there is anything in it that overrules an *ab initio* presumption to the effect that this meaning is the intended meaning; that is to say, he must scan the context to see if there is anything in it which indicates that a nonliteral meaning having some sort of connection with the literal meaning is intended rather than the literal meaning as such, in which case the vocable will be seen to be functioning as a *majāz*-expression. (What he is searching for, as we shall see later, is evidence of what is called *taʿwīl*.²⁶) If he discovers no such factor, then he may proceed to formulate the law on the basis of the *ab initio* presumption. He needs no positive indication that the literal meaning is intended, but only an *absence* of a positive indication that a nonliteral meaning is intended. If a vocable has two or more literal meanings, then the mujtahid is in need of a positive contextual indication as to which of the literal meanings is intended. Here the mere absence of a positive indication of a nonliteral meaning is insufficient. Once the mujtahid has been able to determine which literal meaning is the probable intended meaning, he will then take into account the absence of a positive indication of a nonliteral meaning as a means of further reinforcing his finding.

These points bear upon "Perform the *salāh*-prayer!" as follows. If imposition of obligation is the sole literal meaning of *aqim*, the mujtahid will be in a position to make an initial presumption in favor of imposition of obligation as its intended meaning in Qurʾān 17:78; but he may proceed to formulate the law on the basis of this presumption only after having scanned the context and failed to discover a positive indication that a nonliteral meaning (recommendation or something else) is intended. A true mujtahid may never formulate the law on the basis of an opinion formed on the strength of a univocal signifier when it is possible, through perusal of the context, to form a much stronger opinion. Even if the perusal confirms

his initial presumption, his opinion will be stronger than the opinion held before the perusal.

If, on the other hand, *aqim* is a homonym with both imposition of obligation and recommendation as literal meanings and with other possible meanings as nonliteral meanings, the mujtahid must again go to the context to determine which meaning is intended. However, in this case he has no *ab initio* presumption to work with, against which to use the context merely as a check. Rather, he must use the context to bring him to the point of being able to make a presumption, of being able to form an opinion. Until he finds a positive indication as to which literal meaning is intended, he must be entirely noncommittal, for *aqim* triggers in the mind two meanings both of which have equal claim to principality. The word itself provides no basis for preferring one meaning over another. He is, in other words, in a stymie and can escape only through help from the context: his dependency on the context is thus much greater than it would be vis-à-vis an *aqim* having imposition of obligation as its sole literal meaning. Once he has found evidence favoring imposition of obligation over recommendation as the intended meaning, he is delivered from the stymie and able to form an opinion, although he may still wish to search the context in order to rule out the possibility of an intention of nonliteral meaning.

If one maintains that the *if^{al}* form signifies recommendation alone as its literal meaning and is *majāz* with respect to all other meanings, then one creates still another situation with respect to the understanding of *aqim*, one entirely different from the two just considered. In this case, one will have, upon encountering the expression *aqimi 'l-salāh* and prior to having scanned the context, made a presumption in favor of recommendation. The principality of the sole literal meaning will have worked against the understanding of the true meaning (which we are assuming to be imposition of obligation). The true meaning will have emerged solely as a result of the conscientiousness of the mujtahid who, insisting upon transcending the weaker opinion resulting from the triggering effect of the word, will have dutifully explored the context and found evidence of the word's being a *majāz*-expression for imposition of obligation. In other words, the true meaning will have emerged by virtue of evidence supporting a *ta'wīl*.

From all this an important generalization emerges. The texts in which the indicators of the divine law are to be found are, as I have said, abundantly populated with verbs in the imperative mood, and these verbs consequently constitute a major type of indicator. Those who maintain that the *if^{al}* form signifies imposition of obligation as its sole literal meaning (thus making it a *zāhir* signifier of that meaning) are in effect erecting a principle

of interpretation that favors law over moral exhortation, a principle that is bound to produce an understanding of the Shari'a heavily weighted on the side of those categorizations of human acts that admit of being enforced by the state and its tribunals as opposed to those categorizations that do not. Those who maintain that the *if'al* form signifies recommendation as its sole literal meaning are, in contrast, favoring an approach that is bound to produce a more exhortation-oriented understanding of the Shari'a, one that reduces the legal part of the Shari'a to less demanding proportions. Those who maintain that the *if'al* form is a homonym are in effect making the heaviness or lightness of the legal part of the Shari'a more dependent on the deliberations of scholars. The *if'al* form, in their view, plays a more neutral role.

What of those who suspend judgment? Are they in effect espousing agnosticism as to whether acts are obligatory or recommended? Most certainly luminaries such as Bāqillānī, Ghazālī, and Āmidī himself would espouse no such view, for this would be tantamount to agnosticism with respect to the Shari'a. Their position, it appears, is that from the *if'al* form itself, divorced from its context, we can make a presumption only in favor of an act's being called for. As to whether an act is recommended or obligatory, no presumption can be made on the basis of the form. But this is not to say that we cannot know, or have the opinion, that an act is obligatory or recommended. Such knowledge or opinion can—and must—proceed from our examination of the context. The effect is thus similar to that resulting from the treatment of the *if'al* form as a homonym, though not exactly the same.

Before proceeding to Āmidī's discussion of the arguments for the various positions in the controversy presently under consideration, we should pause to consider the implications of these positions with respect to the issue of whether the *if'al* form constitutes a linguistic form "peculiar to the command," one that "signifies the command and not anything else." This issue, as I noted earlier, may be restated as an issue of whether the *if'al* form constitutes a *zāhir* signifier of the command. I have suggested that one who takes the position that the *if'al* form signifies a calling for an act (or, to use Āmidī's alternative phrase, the giving of priority to the performance of an act over nonperformance) as its sole literal meaning in effect affirms—or comes close to affirming—that this form does indeed constitute a *zāhir* signifier of the command. But what of those who affirm that the *if'al* form signifies imposition of obligation or recommendation as its sole literal meaning or that, as a homonym, it signifies both as literal meanings? Are we to conclude that they do not regard the *if'al* form as a *zāhir* signifier of the command? If we assume that all the jurists under consideration accepted the definition of command by means of the concept of calling for an act, we would seem to

be constrained to reach just such a conclusion. That would mean either that they regard some other linguistic form as the *zāhir* signifier of the command or that they see the *Lughā* as supplying no such signifier. The first possibility seems highly unlikely: what other form might there be? We are therefore left with the second possibility. In this case, the *ifʿal* form, when used to signify a command and nothing more (which usage is certainly common enough and must therefore be taken into account), must be regarded as *majāz*, since the command would necessarily fall among the nonliteral meanings of the form.

I must emphasize that this inference is purely speculative, for Āmidī says nothing on the subject, and that it holds only on the assumption that the jurists in question accept the concept of calling for an act as a definens of the command. In his earlier discussion of the relationship between the concept of the command and the five categorizations of human acts,²⁷ Āmidī has suggested that some Muslim jurists—no doubt a small minority—identified the command with the imposition of obligation. Only obligatory acts could, in their view, be regarded as commanded acts. (The majority, let us remember, considered that both obligatory and recommended acts were to be considered as commanded.) This limitation of the command to the imposition of obligation implies a departure from the definition of command as a calling for an act, since such a definition requires the inclusion of recommendation within the category of command. I am suggesting that any jurist who identified the command with the imposition of obligation (in contrast to one who regarded the command as a calling for an act) would be naturally inclined to view the *ifʿal* form as a *zāhir* signifier of the command; for, assuming that this literal meaning is the sole literal meaning of the form, he would be able quite easily to affirm that the *ifʿal* form does engender the probability that this literal meaning is the intended meaning. Such a jurist would clearly identify the divine command with the law, making mere exhortation dependent upon evidence of a defective usage of the *ifʿal* form.

Of the four positions that play an active role in the dialectic over the issue of whether the *ifʿal* form has as its literal meaning imposition of obligation, recommendation, or both, Āmidī, as I have said, regards the one that opts for a suspension of judgment as the soundest. The argument supporting this position runs as follows. This issue can only be resolved either through rational argument or through an appeal to authoritative texts or some other transmitted datum that carries authority. The first method is out of the question, for there is general agreement that issues pertaining to the *Lughā* cannot be resolved through a process of reasoning. To say that a certain vocable has a particular literal meaning is to say that it was assigned to that meaning in

that primordial moment in which the *Lughā* came into being. No amount of rational argumentation can ever come across this information. It must be learned from authoritative sources that transmit the information across time. What, then, of the second method, which consists precisely in an appeal to such sources? The problem with the second method, according to Āmidī, is that when it is actually applied to the issue under consideration it does not—as he subsequently shows—produce certainty but can at best produce only opinion. But opinion suffices with respect to this issue only if it is counted among those issues that are resolvable through opinion. We, says Āmidī, do not acknowledge that this is the case.²⁸

At this point the reader will do well to review what was said earlier in this book concerning the distinction between *masā'il qat'iya* and *masā'il zanniya* (or *masā'il ijtihādīya*),²⁹ issues that require a sure resolution and issues that admit of a probable, or opinion-based resolution. The former category embraces all those issues that touched on some vital or fundamental point of Islamic theology or theoretical jurisprudence. Examples from theology would be the issue of whether God exists and the issue of whether Muhammad was speaking the truth in claiming to be a prophet of God. Neither God's existence nor Muhammad's prophethood can rest ultimately on mere opinion; to affirm that they may is sheer heresy, for this would mean that disagreement (*ikhtilāf*) among Muslims concerning these two cardinal dogmas would be acceptable. If an issue is *zanniya*, it admits of debate among Muslims: people may hold differing views and all remain fully and indisputably Muslim. If an issue is *qat'iya*, the matter is quite otherwise: there can be only one acceptable resolution, one that all Muslims will, on account of its certainty, agree to—any who do not will be counted as unbelievers or innovators. The Muslim dialecticians debated whether certain issues in theoretical jurisprudence—such as the basis of authority of the consensus—were *qat'iya* or *zanniya*.

The present issue—whether the *if'al* form signifies imposition of obligation or recommendation as its literal meaning, or both—was, we gather from Āmidī's discussion, considered by some jurists to be *qat'iya*. Their thinking can be readily imagined. The *if'al* form, which appears throughout the Qur'ān and Sunna, is one of the principal indicators of the divine categorizations of human acts. If its meaning is entirely a matter of opinion, then both law and morality are for the most part a matter of opinion. Hard knowledge of the Shari'a is virtually ruled out. To many, this consignment of the Shari'a to the realm of the uncertain (for the probable entails an element of uncertainty) seemed to constitute infidelity, not to mention the difficulty it created for judges and rulers who needed to distinguish law from exhortation. Those

who adopted this way of thinking belonged to the ranks of the rigorists, of whom we have taken note several times already in this book. These rigorists sought to enlarge the domain of the *masā'il qat'iya* as much as possible.

Against this rigorist position, some opposing dialecticians argued that the rigorists were *assuming* that the issue at hand was *qat'iya* and that this was an unwarranted assumption that flew in the face of an experienced fact: nothing in the realm of the *Lugha*—of word-meaning correlations—can be determined with full certainty. Āmidī responds to this argument with two points. First of all, to say that nothing in the realm of the *Lugha* can be determined with full certainty is tantamount to denying that certainty is possible with respect to *any* of those categorizations of human acts that constitute the *Shari'a*, for these categorizations are ascertained on the basis of Arabic words and upon meanings drawn from them. While Āmidī is among those jurists who give considerable rein to opinion in the formulation of the law, here he shows himself clearly unwilling to consign the law in its entirety to the realm of opinion. There must be at least some part of the law—no doubt those parts that pertain to the fundamental religious duties, the pillars of Islam—that is sure and beyond doubt (even if the details of these fundamental duties are subject to opinion).

Āmidī's second point is that those who suspend judgment on the issue at hand are not in fact assuming that the issue is *qat'iya*; they are not, therefore, in the true sense rigorists. They are in fact assuming nothing at all—neither that the issue is *qat'iya* nor that it is *zanniya*. That is why they call their position a suspension of judgment. It is the other jurists who make assumptions. Those who accuse the rigorists of assuming that the issue at hand is *qat'iya* are assuming that it is *zanniya*. Since, says Āmidī, we are as unconvinced that it is *zanniya* as we are that it is *qat'iya*, we are unable to accept for this issue a resolution based on opinion. Whether the issue is *zanniya* or *qat'iya* is itself a difficult issue on which we are unable to reach a conclusion, and until we do we are not able to treat the issue as *zanniya*.

These remarks of Āmidī suggest that an opinion can be formed with regard to what constitutes the literal meaning or meanings of the *if'al* form but that such an opinion is irrelevant in the absence of a firm argument for the issue's being *zanniya*. Accordingly, in the ensuing discussion he shows no interest in determining which of several opinions is soundest or strongest but rather attacks all opinions as inadequate and as based on defective or inconclusive arguments. One gets the impression in the end that there is in fact no viable opinion with regard to the issue at hand, however irrelevant it may be, much less a solid claim to certainty.

The first opinion to fall under Āmidī's scrutiny is that which holds that the *if^cal* form signifies imposition of obligation as its sole literal meaning (*minhum man qāla innahu haqīqatun fi'l-wujūb majāzun fimā 'adāhu*, a phrase tantamount to *minhum man qāla innahu zāhiratun fi'l-wujūb*). Āmidī devotes twelve pages in the *Ihkām* to this opinion,³⁰ while devoting only one page to the view that recommendation is the sole literal meaning of this form and none to the two remaining opinions involved in the debate, although the view that the *if^cal* form is a homonym does manage to receive scant attention, amounting to a few lines, in the *Muntahā*. Clearly it was the association of the *if^cal* form with imposition of obligation that enjoyed the widest support and had, for reasons mentioned above, the greatest appeal among Muslim jurists. Much thought had gone into the development of arguments for it, and much thought, therefore, had to be devoted to the evaluation of these arguments.

These arguments, we discover, fall into five categories: arguments from the Qur'an, arguments from the Sunna, arguments from the Ijmā', Lugha-related arguments, and rational arguments. The arguments from the Qur'an appeal to a number of passages in which either the *if^cal* form itself or the word "command" (*amr*) is used. In order to make sense of the arguments that appeal to passages in which the word "command" is used, we must, I think, assume that for the proponents of these arguments the word signaled a divine use of the *if^cal* form. I have already argued that in Āmidī's own usage *amr* frequently translates into *sīghat al-amr*, the imperative form of the verb. But even if this is not the case with the Qur'anic usage of *amr*, the very notion that the command is an idea and that the *if^cal* form is the means whereby it is expressed—a notion whose case Āmidī has already presented—suggests that where a command is mentioned as something communicated to an audience the *if^cal* form is necessarily involved.

I shall here examine the arguments that appeal to Qur'anic passages in which the *if^cal* form actually appears. Āmidī mentions two such passages:

Say: Obey God and obey the messenger. But if you turn away, then he [the messenger] will be held responsible only for what he has been charged with and you will be held responsible for what you have been charged with. (Qur'an 24:54.)

Woe unto the repudiators on that day. When it is said unto them: Bow down, they bow not down! (Qur'an 77:47–48.)

In the first of these passages the *if^cal* form is followed by a threat against those who fail to comply. According to the argument under consideration,

this threat can be appropriate only if "obey God and obey the messenger" clearly and univocally signifies an imposition of obligation. Similarly, the castigation of those who do not bow down in the second passage can be appropriate only if "bow down" univocally signifies an imposition of obligation. Thus, we must judge the *if^ʿal* form to be a *zāhir* signifier, one which signifies imposition of obligation as its sole literal meaning.

The weakness of this line of argumentation, Āmidī notes, is that it depends on the context within which the *if^ʿal* form appears to prove its point. If the *if^ʿal* form really is a *zāhir* signifier, such that it made imposition of obligation a probable intended meaning entirely on its own, there would be no need to turn to contextual factors. All that can be construed from the two passages is that when the *if^ʿal* form is accompanied by a threat against or castigation of those who fail to comply the *if^ʿal* form can be taken to have imposition of obligation as its intended meaning. But this is not to say that this is necessarily its sole literal meaning, since, given the dependency of the interpreter on the context, it could very well be one of several literal meanings (making the form a homonym) or a nonliteral meaning (making it a *majāz*-expression).

Āmidī is implicitly raising doubt about the entire procedure of determining the *zāhir* status of an expression on the basis of texts. If mujtahids, pondering a text, are in disagreement as to whether or not a particular meaning of a word or form is the sole literal meaning (as opposed to one of several literal meanings or a nonliteral meaning), how can the text itself resolve this dispute? By supplying a contextual clue? But the most a contextual clue can show is that one of several possible meanings, whether literal or nonliteral, is the intended meaning in the given case. It cannot prove that this particular meaning is the sole literal one. This is not to say that the particular meaning may not in fact be the sole literal meaning. It *could* be that, and the context could be serving to confirm that it is the meaning intended and not some nonliteral meaning.

The point is that if a mujtahid does not know, prior to encountering a word or phrase in a text, whether a given meaning is the sole literal meaning of the word or phrase, there is no way he can learn this from the text; for the text, beyond being the supplier of the word or form itself, can only be a supplier of a context, and a context cannot be the thing that determines that the meaning is the sole literal meaning. A sole literal meaning is, as we have noted, a meaning that a word or form triggers in the mind of the hearer without triggering any other meaning. An individual mujtahid must, in seeking to determine whether a meaning is the sole literal meaning of a particular word or form, rely either upon his own linguistic instincts or upon the word of an authoritative Lughat specialist.

In discussing among themselves whether imposition of obligation or recommendation could be regarded as the sole literal meaning of the *if^cal* form or whether these were both literal meanings, the Muslim jurists were obviously unable to resolve their differences through appeal to their own linguistic instincts; and we must gather that they were unable to resolve these difference through an appeal to great authorities on the *Lughā*. Āmidī's argument, in effect, is that if these approaches fail, there is no other to turn to: the texts will not come to our rescue. This being the case, the arguments from the *Sunna* (the actual *hadīth* narratives quoted need not detain us) will suffer from the same weakness: dependence upon the context.

Much the same problem arises with respect to the argument from the *Ijmā'*. The community of Muslims, it is said, has always unanimously cited texts containing the *if^cal* form in seeking to establish that the acts of worship (ritual prayer, pilgrimage, fasting, alms-tax) are obligatory. An example would be the Qur'ānic phrase *aqimi 'l-salāh*, referred to above. Since the *Ijmā'* can never be in error, we must conclude that the *if^cal* form signifies imposition of obligation as its sole literal meaning. The problem with this line of reasoning is that it does not take into consideration the possibility that at least some Muslims have regarded imposition of obligation as a nonliteral meaning of the *if^cal* form that the context shows to be the intended meaning. In other words, the fact that Muslims universally cite a text containing the *if^cal* form to substantiate their belief that a given ritual act is obligatory does not in itself prove that they universally regard imposition of obligation as the sole literal meaning of the form. Therefore, the idea that the *if^cal* form signifies imposition of obligation as its sole literal meaning does not have the support of the *Ijmā'*.

It should be noted that Āmidī's opponents are here presented as having used Qur'ānic, *Sunnaic*, and *Ijmā'ic* texts to demonstrate a fact of language. This was not at all atypical. Authoritative texts could, after all, be a source of truth on any subject whatsoever, including the *Lughā*, and grammarians and lexicographers regularly made use of them. Āmidī is here demonstrating that on the particular issue of whether imposition of obligation is the sole literal meaning of the *if^cal* form the texts are incapable of yielding the desired truth for reasons that we have considered.

The *Lughā*-related argument, on the other hand, turns to alleged findings of *Lughā* specialists (*ahl al-lughā*). Their examination of the usage of the *if^cal* form, it is claimed, leads to the conclusion that users of the *Lughā* regard noncompliance with the import of this form as blameworthy. Since blame is appropriate only in relation to obligation, the *if^cal* form must be regarded as signifying imposition of obligation as its sole and therefore clear,

literal meaning. The problem with this argument, according to Āmidī, is that it fails to take into account the possibility that the blameworthiness of non-compliance is indicated by the context rather than by the form itself. There is, incidentally, no evidence in Āmidī's remarks that any Muslim jurist claimed outright that the Lughā specialists regarded imposition of obligation as the sole literal sense of the *if^cal* form. Apparently, all jurists recognized that this simply was not the case.

Under the heading of rational arguments, Āmidī reviews eight distinct arguments, of which I shall here—in order not to prolong our present discussion—draw attention to two. One of these takes as a premise the functionality of the Lughā, which all parties to the debate could be presumed to have accepted. The Lughā exists in order to satisfy the basic needs of the community. Among the more urgent of these needs is the need for a clear indication of required duties, for the happiness of all, both in the present world and in the hereafter, is contingent upon the fulfillment of these duties. If there is no form that clearly signifies imposition of obligation as its sole literal meaning, then this basic need has not been met, an impossible situation, given the functionality of the Lughā. Āmidī's response is that one can as easily argue for an urgent need to signify recommendation, since happiness is also found in the performance of recommended acts. If one makes the *if^cal* form a univocal (*zāhir*) signifier of imposition of obligation, one has deprived the linguistic community of a univocal signifier of an equally important category. We may add to this a point that is part of Āmidī's own view concerning the functionality of the Lughā: functionality does not necessarily entail a dependency on self-sufficient univocal signifiers. If one can signify a concept with the help of contextual aids, one has rendered the Lughā fully functional.

According to the other rational argument, every positive command (*amr*, i.e., *if^cal*) entails a negative command (*nahy*, i.e., *la taf^cal*). That is to say, when I am commanding someone to do something, I am commanding him *not to do* the contraries of that thing. If I command a person to sit, I am commanding him not to stand, not to lie down, not to walk, and so forth. (We shall return to the subject of contraries presently.) Now, since a positive command entails a command not to perform the contraries of the commanded act, it is clearly signifying univocally that the commanded act is obligatory, for a command not to perform something is tantamount to the forbidding (*man^c*) of that thing, and forbidding can have only imposition of obligation as its complement. Āmidī responds: this argument is circular in that it assumes what it is trying to prove, namely, that the positive command is a univocal signifier of imposition of obligation; for when the argument speaks of the positive command as entailing a command not to perform the contraries of the commanded act, it means by

“contraries of the commanded act” contraries of an *obligatory* act. But if we assume that the positive command is a univocal signifier of recommendation, then “contraries of the commanded act” takes on the sense of “contraries of a recommended act,” and we can no longer speak of the negative command as being tantamount to forbidding. This response harks back to Āmidī’s earlier discussion of the relationship between the category of command and the categories of obligation and recommendation.³¹

The arguments cited by Āmidī as having been used by those who maintained that *ifʿal* signifies recommendation alone as its literal meaning and by those who maintained that it is a homonym, signifying both imposition of obligation and recommendation as literal meanings, are considerably fewer, and Āmidī is able to dispose of them in a single page.³² The former group made use, according to Āmidī’s account, of two arguments. One of these appealed to a saying of the Prophet: “If I command you with a command, do it as ye are able; and if I prohibit you from something, refrain from it.” The expression “do it as ye are able” shows, according to the argument, that the Prophet’s command—which we are to understand as having been expressed by means of the *ifʿal* form—constitutes a recommendation, not an imposition of obligation. Āmidī is not impressed. There is no reason, he contends, to suppose that one cannot say of an obligatory act, “Do it as ye are able.” The second argument is classified as a rational one: a recommended act is an act whose performance is preferred over nonperformance. This being the case, obligatory acts are also recommended acts, since the performance of them is clearly preferred over the nonperformance. Thus “recommended acts” is a larger category that is inclusive of “obligatory acts.” The difference between obligatory acts and other recommended acts is that blame is attached to the nonperformance of the former. Now, whether or not a particular recommended act is obligatory is something of which we cannot always be sure, whereas we can be sure that the act is recommended. Accordingly, the *ifʿal* form should be regarded as signifying as its sole literal meaning what is sure. It may be noted that this line of thinking treats the concept of recommendation somewhat on the order of the concept of the calling for an act as developed by those who seek a general rubric under which to place both imposition of obligation and recommendation. Not all, apparently, of those jurists who regarded the *ifʿal* form as signifying recommendation as its sole literal meaning followed this line of thinking.

Āmidī is, in any case, unpersuaded. Imposition of obligation cannot, in his view, be subsumed under the heading of recommendation. But if we did so subsume it, we would be constrained by the logic of this process to subsume recommendation, in turn, under the even more inclusive heading of

permission (*rafʿ al-haraj ʿan al-fiʿl*, literally, “removal of a stricture against an act”) and to regard *ifʿal* as signifying permission as its literal meaning on the ground that we can be even more sure that permission (which is present in both imposition of obligation and recommendation as well as in sheer permission) is signified by it than that recommendation is signified.

The only argument Āmidī mentions in connection with the view that the *ifʿal* form is a homonym—and only in the *Muntahā* does he mention it³³—runs as follows. In actual usage, this form sometimes carries the sense of imposition of obligation and sometimes the sense of recommendation. In both cases the form must be assumed to be functioning as a *haqīqa*-expression and the sense to be a literal sense, since this is what is principal in actual usage (*al-aslu fiʿl-itlāqi ʿl-haqīqa*). Āmidī responds by simply denying that it is principal. We may readily supply an example to illustrate his point. In actual usage, the word “lion” sometimes means a particular kind of predatory feline and sometimes a fearless man; but we cannot say that the word must be assumed to be functioning as a *haqīqa*-expression in relation to both meanings on the grounds that this is what is principal in usage. Although homonymity is a real feature of the *Lughā*, it interferes with communication and so may not be regarded as principal, as something to be assumed *ab initio* to be present whenever a form of expression is used in two different senses.

Having shown that those who regard the *ifʿal* form as signifying imposition of obligation or recommendation as its sole literal meaning or as signifying both of these as literal meanings are unable to provide conclusive arguments to support their views, Āmidī has in effect stated the case for suspension of judgment. The conclusion that his entire discussion thus far has led us to is, then, that the *ifʿal* form signifies the calling for an act as its sole literal meaning and that all attempts to attribute more specific literal meanings to it are without adequate justification. To the extent that this calling for an act is understood to be from a posture of superiority (an understanding that, as I have suggested, may be implied in the phrase *talab al-fiʿl wa-iqtidāʾuh*) the *ifʿal* form may be regarded as a linguistic form “peculiar to the command,” one that “signifies the command and not anything else in the *Lughā*.” In other words, the *ifʿal* form is a *zāhir* signifier of the command but not of any meaning more specific than the command.

Āmidī gives us a good example of how his thinking about the *ifʿal* form works in his discussion of an issue that arises somewhat later in the section of the *Ihkām* presently under consideration: the eighth issue.³⁴ This, says Āmidī at the conclusion of his discussion, is in reality an extension of the issue of what constitutes the literal meaning of the *ifʿal* form. It is therefore fitting that

we consider this issue at the present juncture, before moving on to others. The issue arises among those who hold that the *if^cal* form signifies imposition of obligation as its sole literal meaning: when this form occurs after a previous prohibition of the act in question, does it still signify imposition of obligation? Among the examples Āmidī gives is the Qur'ānic dictum "Go hunting" (5:2), addressed to Muslims who have completed the pilgrimage. Since a Muslim during pilgrimage is prohibited from hunting, the phrase "go hunting" must be regarded as following a prior prohibition against hunting. Another example is the Prophet's saying, "I forbade you to store away the meat of sacrificed animals. Now store it away." The issue at hand seems to pertain to the role of the previous prohibition as a contextual determinant of the meaning of the *if^cal* form (in this case *istādū*, "go hunting"). The question was whether the previous prohibition, functioning as such a determinant, sets aside the literal meaning in favor of a nonliteral meaning—permission.

Āmidī, who does not count himself among those who regard the *if^cal* form as a *zāhir* signifier of imposition of obligation, expresses his own point of view as follows. The *if^cal* form, he reminds his reader, signifies the calling for an act as its sole literal meaning—we have no solid grounds for regarding either imposition of obligation or recommendation as constituting that meaning. When the *if^cal* form is preceded by a prohibition, it *may* signify either permission or imposition of obligation by virtue of its having been diverted from its literal meaning to either of these two meanings. Although Āmidī has earlier clearly included permission among the nonliteral meanings, nowhere does he explicitly include imposition of obligation among those meanings. However, to speak of a word as being diverted from its literal meaning to some other meaning is to speak the language of the Arabic theory of *majāz* usage. There is thus a strong suggestion here that he favors treating any meaning that the *if^cal* form may have other than that of calling for an act as a nonliteral meaning. In the case in question—the use of the *if^cal* form after a previous prohibition—one needs, according to the logic of Āmidī's argument, a contextual determinant beyond the previous prohibition itself in order to know whether permission or imposition of obligation is intended.

Āmidī's inclination, mentioned earlier, to minimize the role of the *if^cal* form as an indicator of the divine law and to maximize the role of the larger, more complex context is clearly evident in the foregoing. The only thing the *if^cal* form does is to give rise to a presumption in favor of the presence of a divine command; in doing this the form serves, as no other linguistic form can, the mission of prophets, which is, above all else, to convey the divine commands to mankind. But more than this we cannot, Āmidī seems to be telling us, expect from the *if^cal* form in and of itself, that is to say, divorced

from its context. He has just shown us that we cannot expect this form to tell us whether an act is obligatory or recommended.

We may now turn to Āmidī's discussion of the remainder of the twelve issues that fall under the heading of the import of the *if^cal* form. Of these, five (the third, fifth, sixth, ninth, and tenth) are related to the central question: does the *if^cal* form signify as its sole literal meaning anything more specific than the simple idea of the calling for an act (*talab, iqtidā'*)? That is, can we say of this calling for an act that the *if^cal* form signifies univocally anything more than that it is a calling for an act? Can we say, for example, that it is a calling for repeated performance of an act throughout one's lifetime or that it is a calling for immediate performance of the act without delay?

It is to these questions that the heading *muqtadā sīghat al-amr*, which I have translated as "the import of the *if^cal* form," seems to have greatest relevance. It has been Āmidī's contention in his discussion of the first and second issues that the *if^cal* form is a *zāhir* signifier for *talab/iqtidā'* and for nothing more specific than that. He has shown the arguments for its being a *zāhir* signifier for imposition of obligation or recommendation to be inadequate. Now he must deal with other attempts to give greater specificity to the literal meaning of the form, attempts that focus on the idea of *talab/iqtidā'* as such. The phrase *al-amru muqtadin* (or *yaqtadi*) begins at this point to assume a central place in the discussion. As I have suggested, we may see this phrase as translatable into "the *if^cal* form signifies a calling for x." We are still in the arena of discussion of what constitutes the sole literal meaning of the *if^cal* form, the meaning of which it is a *zāhir* signifier.

The remaining five issues take us somewhat outside this arena of discussion. The fourth and the eighth are concerned with the meaning the *if^cal* form acquires by virtue of its occurring within certain contexts, not with the meaning it signifies in and of itself as a *zāhir* signifier. The seventh, eleventh, and twelfth are even more peripheral to the main discussion.

On the issue of whether the *if^cal* form signifies as its sole literal meaning a calling for repeated performance of an act throughout one's lifetime or a calling for a single performance only (third issue), Muslim jurists were, according to Āmidī's account, divided into the following four groups:

1. One group regarded the *if^cal* form as a *zāhir* signifier of a calling for lifelong repetition of an act except where the act was intrinsically non-repeatable.³⁵ In this view, whenever we encounter the *if^cal* form in isolation, we must, if we perceive the act commanded to be repeatable, make a presumption in favor of a calling for lifelong repetition, since the notion of lifelong repetition is contained within the meaning that comes immediately to mind upon hearing the form uttered. Where

there is a context which shows that a single performance only is called for, this presumption is, of course, overturned. Āmidī cites one name in connection with this group—Abū Ishāq al-Isfarā'īnī.

2. A second group maintained that the *ifʿal* form is a *zāhir* signifier only of the simple idea of a calling for an act and that the idea of a one-time-only performance and the idea of lifelong repetition therefore *both* lie outside the literal meaning of the form and must be extracted from its context. Thus, as regards the idea of lifelong repetition in particular, this group held that the *ifʿal* form *may* with the help of the context signify a calling for lifelong repetition but that in so doing it is functioning as a *majāz*-expression. The calling for lifelong repetition, as opposed to the simple idea of the calling for an act, thus seems, in this view, to have the status of a nonliteral meaning. The second group further maintained that, while the *ifʿal* form can signify only with the help of the context that the act is to be repeated throughout one's lifetime, we can nonetheless know without the help of the context that a single performance is called for, since a single performance is necessary in order for the calling for an act to be realized. This statement of the position of the second group, which will be more fully explained presently, goes considerably beyond Āmidī's own statement of it in the opening lines of his discussion of the third issue; it is, rather, derived from Āmidī's subsequent elaboration of the position in the course of arguing on its behalf.³⁶
3. A third group considered the *ifʿal* form to be a *zāhir* signifier of a calling for a single performance and further held that it *may not* signify a calling for lifelong repetition. This view, which refused to accord the calling for lifelong repetition even the status of a nonliteral meaning, is attributed to the Muʿtazilī Abu'l-Husayn al-Basrī.
4. A fourth group suspended judgment on the issue of whether the *ifʿal* form may or may not, with the help of the context, signify a calling for lifelong repetition. Āmidī notes that Juwaynī leaned toward this view. One gathers from Āmidī's subsequent discussion that this group agreed with the second group to the effect that the *ifʿal* form, in signifying the simple idea of a calling for an act, is suggestive of a calling for a single performance inasmuch as a single performance is necessary if the simple calling for an act is to be realized. The suspension of judgment pertains to whether it is possible for the form to signify a calling for lifelong repetition as a nonliteral meaning (in which case it becomes a *majāz*-expression).

The discussion that follows the initial presentation of these four positions soon reveals that Muslim jurists, in debating the issue among themselves, gave special prominence to two instances of the *if^cal* form in the Qur'ān—"pray!" (*salli* or *aqim 'l-salāh*) and "fast!" (*sum*). These two words undergird two of the five principal acts of worship, the *salāh*-prayer and the fast of Ramadān. No Muslim would ever deny that these acts of worship are to be repeated throughout one's lifetime, the prayer five times daily and the fast each year during the daytime hours of Ramadān. The question that the jurists raised was whether this calling for repetition was signified by the *if^cal* form as such, quite apart from its context. One needed, of course, the context in order to know the precise times at which these acts of worship were to be performed, not to mention the details of their correct performance. But one could still meaningfully ask whether the words *salli* and *sum* created by virtue of their form alone (*if^cal*) a presumption in favor of repetition. If so, then anyone upon hearing either word would immediately presume that he was to pray or fast repeatedly throughout his lifetime, and he would become predisposed to look for further details in the context; if not, then he would presume that by praying or fasting on a single occasion he had fully complied with the command.

One can readily think of numerous further instances, not only from Islam but also from Judaism and Christianity, of divine usage of the imperative form of the verb to express a commanding of acts that the faithful universally regard as repeatable throughout one's lifetime. For example, no one questions that the act of honoring one's father and mother—which is called for by the words "Honor thy father and thy mother" (the fifth commandment)—is to be performed perpetually throughout one's lifetime so long as this is possible (that is, so long as one's father and mother are living). Codes of law are in fact most typically made up of imperatives that are taken by interpreters as signifying a calling for indefinite repetition, since law is interested primarily in the regulation of human behavior through time rather than on single occasions. It is therefore not surprising that Muslim jurists should have asked whether the *if^cal* form itself engenders a presumption in favor of this perpetuity.

Those who adopted the first of the above-mentioned positions made, as we noted, an exception of cases in which the commanded act was intrinsically unrepeatable. Āmidī gives no example of such an act, although we may suppose that he has in mind acts such as becoming a Muslim (*islām* in the strict sense of the word). The command to become Muslim—that is, to submit to God and to his apostle—extends to the whole of mankind; but one becomes a Muslim only once, so that it is inconceivable that the

command “become a Muslim!” (*aslim*) should in and of itself entail a calling for repetition. The *state* of being a Muslim is, of course, to be perpetuated by a continual act of the will, but the act signified by the verb *aslama* is understood to consist, not of the perpetuation of that state, but rather of its initiation. When the biography (*sīra*) of the Prophet uses this verb with reference to the people of Mecca and Medina, it is clearly referring to a once-in-a-lifetime act.

The expression “lifelong” (*li-zamān al-ʿumr*) has the sense of “indefinite” as opposed to “subject to a fixed term.” The issue could only be whether the *ifʿal* form is a *zāhir* signifier of a calling for repetition of an act indefinitely or of a calling for a one-time-only performance. The question of whether the form can be a *zāhir* signifier of a calling for repetition over a specific span of time (such as ten years) could not, of course, arise; such a meaning would necessarily have to arise from the context.

Āmidī himself, as I have intimated, favors the second of the four above-mentioned positions. The *ifʿal* form, he argues, is a *zāhir* signifier of a calling for nothing more or less than the occurrence of the act signified by its corresponding verbal noun (*masdar*). Muslim etymological theory held that verbs were derived from verbal nouns, which thus had the status of etymons. Each verb carried on the significative function of its etymon through its radicals. In other words, the radicals *d r b* in the word *idrāb* signify, as does the verbal noun *darb*, the act of striking, and these radicals together with the form with which they are united in *idrāb* (the *ifʿal* form) constitute a *zāhir* signifier that signifies that the act of striking is to occur, nothing more and nothing less. The radicals, like the verbal noun, *may* signify a plurality of acts of striking with the help of the context, though they do not do this on their own. When this is the case, then the radicals together with the *ifʿal* form signify that a plurality of acts of striking is to take place.

On the other hand, when there is nothing in the context that shows that the radicals signify a plurality of acts of striking, then we must content ourselves with the realization that radicals and form together (*idrāb*) signify simply that the act of striking is to occur. Now, while the context is required in order to establish positively that the act of striking is to occur only once, we may presume quite apart from the context that the act of striking is to occur at least once, for a single occurrence is necessary in order for the act to occur at all (*al-marratu ʿl-wāhidatu min darūratī iqāʿi masdari ʿl-fiʿl*). Thus the *ifʿal* form, in signifying a calling for an act, in effect signals a calling for a single performance as the necessary means of bringing the act about.

Āmidī is here drawing a subtle and somewhat elusive but, for him, important distinction between the notion of a calling for a single performance of an

act and the notion of a calling for an act that can be realized only through a single performance. He wishes to say that the *if^cal* form is a *zāhir* signifier, not of the former, but of the latter. The former it can signify only with the help of the context. Singularity of performance is an intrinsic part of the first notion, whereas it is, as it were, a concomitant of the latter notion.

Āmidī illuminates this complex point of view with reference to the case of a master and his slave. If a master says to his slave, "Buy bread," the slave will be considered obedient if he makes a single purchase of bread and non-compliant if he makes multiple purchases of bread. The reason for this is that the slave, if he is a sane adult, will understand that if his master's calling for the purchase of bread is to be realized he must make at least one purchase of bread. If he made no purchase at all, he would clearly be disobedient. However, so long as there is no context to indicate a calling for multiple purchases, the slave has no warrant to make multiple purchases and must be considered noncompliant if he does, since multiple purchases are not necessary for the realization of the simple calling for the act of making a purchase. While Āmidī does not say explicitly that a process of reasoning is involved in the slave's understanding that he is to make one purchase, as opposed to no purchase or multiple purchases, his argument strongly suggests that this is the case. The point is that the context is not required in order for the slave or anyone else to have this understanding: the *if^cal* form itself suffices.

As we turn to Āmidī's critique of the opposing positions, we find that he gives the lion's share of attention (eight pages) to the view that the *if^cal* form is a *zāhir* signifier of a calling for lifelong repetition of an act.³⁷ From this we may infer that, of the three opposing positions, this one enjoyed greatest popularity among Muslim jurists up to his time. I shall accordingly confine the present investigation to Āmidī's critique of it.

The appeal of this position no doubt lay in its providing for the lifelong duration of many of the fundamental religious duties of Islam a solid basis in an easily identifiable linguistic form, namely, the *if^cal* form. Upon encountering instances of this form in the authoritative texts, the believer was, according to this position, obliged in the absence of any contextual evidence to the contrary to make a presumption in favor of a lifelong operativeness of the command expressed through the form. The appropriateness of such a presumption seemed to be confirmed by the great frequency of instances in the authoritative texts in which the *if^cal* form, by agreement of scholars, gave expression to perpetually operative commands. This frequency was, in fact, used by adherents of the position under consideration to argue their case. Instances in which the *if^cal* form signifies a calling for lifelong repetition of an act are, they contended, more frequent than instances in which the form

signifies a calling for a single performance; therefore, it stands to reason that the former sense and not the latter constitutes the true literal meaning of the form and that the latter must be treated as nonliteral.³⁸ It is significant that Āmidī, in responding to this argument, does not disagree with the premise. One gathers from this that there was a consensus among the Muslim jurists that instances in which the form signifies a calling for lifelong repetition are more frequent. The issue had to do with what one could or could not make of this fact. Āmidī dismisses the argument on the ground that its conclusion is irrelevant, for he and others who share his point of view are not affirming the reverse of that conclusion; that is to say, they are not affirming that the calling for a single performance is the literal meaning and that the calling for lifelong repetition is a nonliteral meaning. Rather, they are affirming that the literal meaning—the meaning of which the *ifʿal* form is a *zāhir* signifier—is the simple idea of a calling for an act and that neither the calling for lifelong repetition nor the calling for a single performance constitute the literal meaning as such.

Āmidī enumerates and refutes a total of eleven arguments used in support of the position under consideration, one of which—or part of it—has just been alluded to. Many of the remaining arguments involve considerations relating to topics or issues that arise later in the *Ihkām*, which we have not yet taken cognizance of, and others seem, at least to me, not to have much force. However, Āmidī's discussion of one argument in particular will give us a good example of the dialectic he records. This argument takes the form of a *reductio ad absurdum*: if the *ifʿal* form is not a *zāhir* signifier of a calling for repetition, then it follows that a speaker cannot properly say either “pray once” (*salli marratan wāhidatan*) or “pray repeatedly” (*salli mirāran*), which is an absurd conclusion. This argument obviously presupposes that, if the *ifʿal* form is not a *zāhir* signifier of a calling for repetition, then it must necessarily be a *zāhir* signifier of a calling for a single performance, for the absurdity mentioned follows from the latter. If the *ifʿal* form is a *zāhir* signifier of a calling for a single performance, then the word “once” in “pray once” becomes superfluous, since the word “pray” alone signifies that the prayer is to be performed once, and superfluity is improper; and “pray repeatedly” becomes a contradiction, since the word “repeatedly” contradicts the calling for a single performance signified by “pray.” But we know that it is quite proper for a speaker to say both “pray once” and “pray repeatedly.” Āmidī's response to this argument makes it clear that it is directed against a straw man, for he himself does not agree that if the *ifʿal* form is not a *zāhir* signifier of a calling for repetition, then it must be a *zāhir* signifier of a calling for a single performance. His position, as we have seen, is that the form is a *zāhir* signifier of neither

of these two meanings but rather of the simple idea of a calling for an act. Therefore, his way of thinking does not negate the propriety of either “pray once” or “pray repeatedly,” since the words “once” and “repeatedly” can both be regarded as contextual clues indicating either that a single performance is called for or that repetition is called for.

The fourth issue, which is connected with the third in that it has to do with the subject of repetition, was, Āmidī tells us, debated only among those jurists who denied that the *ifʿal* form is a *zāhir* signifier of a calling for repetition.³⁹ When the *ifʿal* form is conjoined with a condition (*shart*) or an attribute (*sifa*), does it then signify a calling for repetition of the act? Āmidī’s discussion of this issue momentarily takes us away from the subject of what the *ifʿal* form signifies in its capacity as *zāhir* signifier, drawing our attention to a quite different subject: the functioning of the *ifʿal* form in conjunction with a contextual factor.

Āmidī gives an example from the Qurʾān for each of the two contextual factors under consideration, the condition and the attribute, but then makes it clear that the condition and attribute that appear in his two examples do not represent the type of condition and attribute at issue. The examples are: “Pray when the sun sets” (17:78) and “As for the fornicatress and fornicator, flog each of them with a hundred lashes” (24:2), the condition in the first example being “when the sun sets” and the attribute in the second example being fornication. The type of condition and attribute that these represent is the type that functions as the occasioning factor (*ʿilla*, to be explained later in this book⁴⁰) behind a rule of law. When a condition or attribute has this function, then clearly whenever it is present the command expressed by means of an *ifʿal* form is operative and the act is (whether by way of imposition of obligation or recommendation) to be performed. Thus the repeatability of the condition or attribute in this case has as its correlate a calling for repetition of the act. What is at issue here, says Āmidī, is solely the condition or attribute that is not functioning as the occasioning factor behind a rule or command.

In giving his argument for his own point of view on this issue—which is that the *ifʿal* form, when conjoined with a condition or attribute that is not functioning as the occasioning factor behind a rule or command, does not signify a calling for repetition—Āmidī makes no mention of the attribute but speaks only of the condition. This is due to the fact that the attribute that the Muslim jurists have in mind in the present discussion is really itself a kind of condition and can be included under the larger category of condition. That this is so can be seen from the two Qurʾānic examples, which, however inappropriate they may be relative to the issue at hand, nonetheless serve to illustrate what is meant by “condition” and “attribute.” In the first example,

the addressee is commanded to pray whenever the sun sets; the setting of the sun is thus a condition placed upon the act of praying. The second example can be reworded so as to make the condition more obvious: “if a man and woman be fornicators, flog them.” The act of flogging is clearly subject to the condition that the persons flogged be fornicators.

Where a condition constitutes the occasioning factor behind a rule or command, then from its realization will follow the realization of the thing it governs, the *mashrūt*. The condition in this case bears a close resemblance to what is called in English the sufficient condition, as opposed to the necessary condition. Where a condition does not constitute an occasioning factor behind a rule or command, then it can only be said that from its *nonrealization* will follow the *nonrealization* of the thing it governs. Āmidī gives as an example of the latter type of condition the state of being married (*al-ihsān*, literally, “inviolable”), which is a condition of the application of the penalty of stoning to fornicators. If the fornicators are not married, stoning does not occur; but it cannot be said that if the fornicators are married stoning occurs, since much more is entailed in bringing about the penalty of stoning. On the other hand, the occurrence of fornication between unmarried persons, inasmuch as fornication is an occasioning factor behind the rule requiring flogging, does bring about the penalty of flogging.

Āmidī argues for his point of view as follows. If the *if^cal* form, when conjoined with a condition, signifies a calling for repetition, then the question arises: what is the decisive factor in this signification? It cannot be the *if^cal* form itself, since we have seen that the *if^cal* form does not in and of itself signify a calling for repetition. Is it then the condition? No, says Āmidī, for there is nothing about a condition that suggests a calling for repetition. We have just noted that for Āmidī a condition that is not functioning as an occasioning factor behind a rule or command does not, upon its realization, necessitate the realization of the thing governed by the condition. But what of the *combination* of the *if^cal* form and the condition? Can we not say that it—in contrast to the two elements taken separately—is the decisive factor? Again, Āmidī’s answer is no, and his argument takes the form of the citation of an example: saying to one’s slave, “If you enter the market, buy some meat.” From these words anyone conversant with the Lughā will understand that should the slave happen to enter the market several times on the same day he is not expected to buy meat each time he enters. One could, of course, argue that, since these words give rise to this understanding, the example shows that neither the *if^cal* form (*ishtari*, “buy”) nor the condition nor the combination of form and condition signify a calling for repetition: *nothing* in these words signifies this.

The fifth issue brings us back to the question of what the *if^cal* form signifies in and of itself apart from the context,⁴¹ which, as we have repeatedly noted, is tantamount to the question of what the form signifies as its literal meaning, the meaning in respect to which it may be considered a *zāhir* signifier. Here the focus is upon timing: does the *if^cal* form signify as part of its literal meaning that the act called for is to be performed as soon as possible? All those who held that the *if^cal* form signifies a calling for repetition as its literal meaning answered this question, we are told, in the affirmative. Since the act was to be repeated, it made no sense to say that the timing of the initial performance was a matter of indifference. Who would call upon another to perform an act repeatedly, to make it part of his daily, weekly, or annual routine, and allow him to begin performing the act whenever he pleased, whether immediately or weeks, months, or even years later? In this view, the addressee could be regarded as obedient only if he performed the act as soon as possible: to delay performance beyond the first moment in which performance was possible constituted a transgression. Thus if one were called upon to perform the *salāh*-prayer at sundown, one should do so at the very next sundown and not postpone the prayer to a later sundown to suit oneself.

Among the rest of the jurists, some maintained that the *if^cal* form does *not* signify as part of its literal meaning that the act called for is to be performed as soon as possible, thus in effect allowing the addressee to delay performance of the act. In this view, the addressee was to be regarded as obedient regardless of when he performed the act. Immediate performance and delayed performance were on a par. Timing did not enter into the question of whether one was to be regarded as obedient or as a transgressor.

A third group of jurists preferred to suspend judgment on this issue. This meant that the question of when the performance of an act constituted obedience and when it constituted transgression was left open. However, some in the third group took the view that immediate performance could never constitute a transgression and that only the status of delayed performance was left up in the air, whereas others regarded the status of both immediate performance and delayed performance as unresolved. This suggests that the former members of the third group considered that the *if^cal* form carries a sense that immediate performance satisfies the calling for an act that it signifies but carries no such sense with respect to the delayed act, whereas the latter considered that the *if^cal* form leaves entirely open the question of whether either the immediate performance or the delayed performance satisfies the calling for an act.

Āmidi regards the position of the second of the above-mentioned groups as the strongest. The *if^cal* form, he argues, is a *zāhir* signifier of a calling for

an act and nothing else. This being the case, we must, whenever we encounter the *if^cal* form, assume as a matter of principle, in the absence of contextual evidence to the contrary, that the speaker intends nothing extraneous to this simple meaning (*al-aslu ‘adamu dalālatihi ‘alā amrin khārij*). Furthermore, it is quite permissible (presumably from the point of view of the *Lugha*) for one to use the *if^cal* form to command either that an act be performed immediately or that it be performed at the leisure of the one commanded. Since it is the context that will indicate which of these is intended, we must regard the *if^cal* form as signifying in and of itself only what is common to these two cases—the simple notion of a calling for an act quite apart from the matter of timing.

In speaking of the *if^cal* form as the *zāhir* signifier of a calling for an act are we in effect saying that it is *ipso facto* the *zāhir* signifier of a calling for the nonperformance of all the contraries of that act (sixth issue)?⁴² Āmidī’s own wording of this question in Arabic is as follows: *al-amru bi’l-shay’i ‘ala ‘l-ta’yīni hal huwa nahyun ‘an addādh*. In keeping with my decision to translate *amr* and *nahy* as “positive command” and “negative command,” I suggest the following translation of Āmidī’s words: does the command (as expressed by means of the *if^cal* form) *to do* something that is clearly specified amount to a command (as expressed by means of the *lā taf^cal* form) *not to do* the contraries of that thing? (I am taking *al-nahy ‘an addādh* to be tantamount to *al-amr bi-tark addādh*.) If the answer to this question is “yes,” then clearly to say that the *if^cal* form is a *zāhir* signifier of a command to do something is to say that it is *ipso facto* a *zāhir* signifier of a command not to do the contraries of that thing.

Judging from Āmidī’s account, this issue was debated mainly among the speculative theologians, for Āmidī mentions only speculative theologians, both Ash‘arī (“my associates”) and Mu‘tazilī, as having entered into the debate. According to some of the speculative theologians, the positive command did indeed amount to a negative command vis-à-vis the contraries of the act called for. The common Ash‘arī argument for this point of view was that the positive command (as the mental content, or meaning, to which the *if^cal* form gives expression) consists of a calling for an act, and the calling for any act is tantamount to a calling for nonperformance of the contraries of that act. The Mu‘tazilīs who accepted this point of view argued along similar lines: the *if^cal* form indicates that an act is to be made to occur and anything that prevents the act from occurring is to be avoided. An example might be: “Stand up.” These words indicate not only that the addressee is to stand up but also that he is not to sit, run, jump, and so forth.

Others—apparently only among the Ash‘arīs—held that the positive command should be regarded as *implying* a negative command vis-à-vis the

contraries of the act called for. A positive command, in this view, can never be identical with a negative command, as the first group seems to maintain. This second group is thus in effect affirming that the *if^cal* form is not a *zāhir* signifier of a calling for nonperformance of the contraries of the act called for, for the concept of a calling for nonperformance of the contraries is entirely distinct from the concept of a calling for performance and is thus not an integral part of the meaning to which the *if^cal* form was assigned by the inventors of the Lughā. Āmidī has, in an earlier discussion,⁴³ stated that the implications a word or form may carry are not to be identified with the meaning of the word or form; implied notions lie *outside* the meaning as such. By contrast, the first group seems clearly to be affirming that the *if^cal* form does indeed signify a calling for nonperformance of the contraries as part of its literal meaning.

A third group, including both some Ash'arīs and some Mu'tazilīs, held that the positive command neither is tantamount to nor implies a negative command vis-à-vis the contraries of the act called for. In this view, the *if^cal* form clearly does not lead us to the negative command in any way whatsoever. Āmidī mentions in connection with this view the names of Juwaynī and Ghazālī. Bāqillānī, incidentally, is said to have taken the view of the first group in his earlier writings and that of the second group in his later writings.

Āmidī himself links the issue to one considered earlier in this book—whether it is possible for an individual to be under a charge to do something that lies beyond his capacity—and he takes the position that the viability of the opinion that one holds on the former issue will be determined by the opinion one holds on the latter issue. Thus, if one holds that an individual may be placed under a charge to do what lies beyond his capacity, one will be inclined to hold that the positive command neither amounts to nor implies a negative command vis-à-vis the contraries of the act called for, for it is quite feasible, in this view, for an individual to be charged simultaneously to perform an act and to perform its contraries.

On the other hand, if one holds that an individual may not be charged with what lies beyond his capacity, then one cannot, according to Āmidī, but favor tying the positive command to a negative command vis-à-vis the contraries of the act called for. However, the only correct way to do this, for Āmidī, is to regard the positive command as implying the negative command, which is justified by the fact that it is impossible to conceive of the performance of the act called for by the positive command apart from the nonperformance of the contraries of that act. Āmidī insists that we have no justification for regarding the positive command as identical with the negative command, for the idea of a calling for an act (i.e., the positive command) is conceptually distinct from the idea of a calling for nonperformance of the contraries of that act

(i.e., the negative command), however strong the logical tie between them may be. Therefore, they constitute separate meanings, one being the meaning of the *ifʿal* form, the other the meaning of the *lā tafʿal* form. It thus cannot be said that to speak of the *ifʿal* form as the *zāhir* signifier of the former is in effect to speak of it as the *zāhir* signifier of the latter, as though the two were one and the same.

Since Āmidī has earlier opted in a qualified way for the view that an individual may not be charged with doing what lies beyond his capacity, we may gather that on the present issue he counts himself among those who hold that the positive command implies, without being tantamount to, a negative command; and this in turn suggests that he regards the *ifʿal* form as not constituting a *zāhir* signifier of a calling for the nonperformance of the contraries of the act called for. Implying is not, let us remember, the same thing as signifying.

Against the view that the positive command, while implying a negative command, is nonetheless conceptually distinct from the negative command, Bāqillānī is cited as arguing that if it was truly distinct from the negative command it would be separable from it in the sense of being able to exist apart from it, which is, of course, not the case. But Āmidī responds simply by arguing that distinctness does not necessarily entail separability. The difference of opinion here seems to be over terminology: if “distinct” is defined in terms of separability, then indeed two things that are distinct from each other must be separable from each other. But Āmidī seems to be saying that “distinct” is not so defined.

The seventh issue is clearly unrelated to the function of the *ifʿal* form.⁴⁴ It has to do with the correct use of the term *ijzāʾ* with reference to acts performed in response to commands. This term—which may, for convenience, be translated as “execution” with the understanding that a technical sense is here intended—was applied by Muslim jurists to acts in two different senses: an act could constitute an execution of a command in the sense that it fully satisfied the command or in the sense that in fully satisfying the command it ruled out the possibility of a further command calling for *qadāʾ*, a technical term whose meaning was itself something of a problem. The Muʿtazilī theologian ʿAbd al-Jabbār launched a controversy when he declared that an act could not constitute an execution in the second sense, as against the prevailing opinion, which was that it could.

The controversy that developed was, in the final analysis, a controversy over terminology, says Āmidī, not a controversy over a matter of substance, since the position one took depended on how one understood the meaning of *qadāʾ*. If one followed the general practice of taking *qadāʾ* to mean

a compensatory performance of an act that was initially performed in a defective manner, then an act that fully satisfied a command could indeed be regarded as constituting an execution of the command in the second of the two senses mentioned above: it did indeed rule out the possibility of a further command calling for a compensatory performance of the act. If, on the other hand, one took *qadā'* to mean a later—but not compensatory—performance of an act, over and above that called for by the initial command (we are not here dealing with repetition as something built into that command), then one was at liberty to deny that the act performed in response to that initial command was an execution of the command in the second of the two above-mentioned senses, for the act did not rule out the possibility of a further command calling for a second (noncompensatory) performance.

Having already dealt with the eighth issue, we may pass on to the ninth through the twelfth issues. As with the seventh issue, these issues seem, judging from the relative brevity of Āmidī's discussion of them, not to have had major importance for Muslim jurists generally, and I shall accordingly touch upon them only briefly. The ninth issue brings us once again to the subject of *qadā'*. However, since in the debate over this issue the term refers consistently to the compensatory performance of an act, we may phrase the issue as follows: does the *if'al* form signify in and of itself—that is to say, as part of the meaning of which it is a *zāhir* signifier—a calling for a compensatory performance of an act in the event that the act is, in the first instance, performed in a faulty manner?

From Āmidī's discussion of the seventh issue we may gather that many—perhaps most—Muslim jurists linked the calling for a compensatory performance to a fresh command (*amr mujaddid*), one distinct from the original command. From the discussion of the ninth issue we learn that some jurists tried to link it to the original command.⁴⁵ Āmidī identifies these jurists as “the Hanbalīs and a party of the *fuqahā*” (meaning, no doubt, a party of the Hanafī *fuqahā*). One jurist—Abū Zayd al-Dabūsī—is said to have held that the calling for a compensatory performance is established by means of analogical reasoning. It is, according to Āmidī, the Ash'arīs and Mu'tazilīs—that is to say, speculative theologians, most of whom were followers of al-Shāfi'ī in *fiqh*—who hold that a fresh command is necessary to establish such a calling.

Āmidī supports this last view with a saying of the Prophet: “Whoever sleeps through the time of prayer or forgets to pray, let him perform the prayer when he remembers to do so.” This is clearly a command calling for a compensatory performance. One must assume as a matter of principle, in the

absence of evidence to the contrary, that the Prophet, in saying, “Let him perform the prayer when he remembers to do so,” was not merely reinforcing a calling for a compensatory performance contained in the original command to pray but was rather consciously issuing a command *de novo*.

To state the view of the speculative theologians in terms of the function of the *ifʿal* form: this form is not a *zāhir* signifier of a calling for a compensatory performance in the event of a faulty initial performance. Such a calling requires words like those of the Prophet quoted above, which place the *ifʿal* form within a context that indicates clearly that a compensatory performance is called for. The *ifʿal* form alone never suffices.

The tenth issue takes up the subject of the use of the *ifʿal* form to command one party to command another.⁴⁶ An example of this would be someone’s saying to Zayd, “Say to ʿAmr, ‘Buy some bread’” (*qul li-ʿamr: ishtari khubzan*). In this example, the word *qul* (the *ifʿal* form of *qāla*) is used to convey to Zayd a command to command ʿAmr to buy bread. The issue that such use of the *ifʿal* form raises is whether the second party is to be regarded as subject to the command addressed to the first party; or, to phrase the issue with reference to our example, is ʿAmr to be considered as commanded to buy bread by virtue of the command given to Zayd (*qul li-ʿamr*) or by virtue of the command given by Zayd to him (*ishtari khubzan*)?

Āmidī’s answer to this question—which is stated without any reference to other opinions—is a flat no. His argument takes the form of a *reductio ad absurdum*. If the second party was subject to the command addressed to the first party, it would follow that when the Prophet said to guardians of minors, “Command them to pray when they are seven years old,” he was by virtue of the word “command” (*murū*, *ifʿal* form of *amara*) commanding the minors themselves. This would mean that the minors were themselves subject to a divine command (as mediated through the Prophet). But minors are in fact not subject to divine commands. That this is so can be demonstrated as follows. If minors were subject to divine commands, they would be blameworthy in the event of their noncompliance with any divine command. But it is inconceivable that those who are deficient in their understanding of the divine speech—as are minors—should be blameworthy. This is confirmed by the Prophet’s saying, “The Pen is held back from the youth who has not attained majority.” Furthermore, Muslim scholars have always agreed that minors, by virtue of their deficient understanding, are not subject to divine commands. Since the exempt status of minors is supported by rational argument, prophetic dictum, and the Ijmāʿ, we are constrained to conclude that the Prophet’s command to the guardians does not apply to the minors as such.

This nonapplication must be explained in either of two ways: either the Prophet's command does "by virtue of the *Lugha*" (*lughatan*; that is to say, by virtue of what the *if^cal* form signifies in and of itself as a *zāhir* signifier) apply to minors but this application is suspended by virtue of counterindicators such as the saying, "The Pen is held back from the youth who has not attained majority," or the Prophet's command does *not* "by virtue of the *Lugha*" apply to minors. The first explanation will not work, since both of two contradictory indicators must be assumed, as a matter of principle, to be in force so long as there is no clear evidence that one of them has been suspended. Therefore, we are left with only the second explanation. The upshot of the entire argument, then, is that the *if^cal* form does not, when used to signify a command to command, signify in and of itself—that is, as part of the meaning of which it is a *zāhir* signifier—that the second party is subject to the original command. If the second party is subject to the original command (which is not the case with minors), this must be determined on the basis of contextual indicators.

The eleventh issue—whether the *if^cal* form can signify a calling for a "universal essence" (*al-māhiya al-kullīya*) common to diverse types of acts—requires a word of explanation.⁴⁷ Here the focus of attention is upon the interworking of the two main components of the verb in the imperative mood, the *if^cal* form and the radicals. As we have earlier noted, the radicals carry on the significatory function of the verbal noun, from which all verb forms are believed, in Arabic etymological theory, to be derived. Thus in the case of the imperative *bi^c*—"sell!"—the radicals *bā'*, *yā'*, and *ʿayn* simply name an act (selling) while the form superimposed upon them (the *if^cal* form) signifies a calling for that act.

But there are two kinds of selling: equitable selling and nonequitable, or fraudulent, selling. The terms "equitable" and "fraudulent" constitute qualifications (*quyūd*) whereby particular kinds of acts falling within a general category are distinguished from one another. The issue at hand is concerned with the treatment of verbs such as *bi^c* when they are devoid of any context containing a mention of distinguishing qualifications. Some Ashʿarīs (whom Āmidī refers to as "our associates"), in what appears to have been an inter-Ashʿarī dispute, maintained that *bi^c* must be taken to be applicable to a universal essence common to all the acts within the general category. In this case, the *if^cal* form is signifying a calling for such a universal essence, not for a specific kind of act falling within the category. The context may then enter in to "divert" *bi^c* from this general meaning—its literal meaning—to a more precise nonliteral meaning, such as the calling for an equitable sale.

This is truly an academician's issue, and Āmidī works out his own position in the spirit of Ash'ari speculation that prompted the dispute in the first place. If one holds, as he himself does, that an individual cannot be charged with doing what is intrinsically impossible, then one is constrained to deny that the *if'al* form, inasmuch as it is the instrument for the imposition of a charge (here Āmidī seems, contrary to his earlier practice, to include both imposition of obligation and recommendation within the notion of the charge), can signify a calling for a universal essence common to diverse kinds of acts; for such a universal essence is something whose actual performance is intrinsically impossible. One cannot, for example, perform the act of selling as a pure essence apart from either equitable or fraudulent selling.

It should be noted that Āmidī here seems to have in mind by "universal essence" something on the order of the genus as opposed to the species. One can argue that equitable selling is a universal and that specific instances of equitable selling are its particulars. This way of distinguishing universal from particular is absent from Āmidī's thinking in the present context. He is rather concerned with a universal essence that stands at a higher rung in Porphyry's ladder, of which types or categories of acts, such as equitable selling and fraudulent selling, are "particulars."

The twelfth issue pertains to the occurrence of the *if'al* form twice in succession without an intervening conjunction.⁴⁸ Do the two instances of the *if'al* form represent two separate commands, or do they represent a single command such that the second instance serves merely to reinforce the first? As we follow Āmidī's discussion of this issue, we soon learn that what the jurists who debated it were really concerned with was juxtapositions of commands such as "Draw me some water, draw me some water" and "Fast on Friday, fast on Friday." These examples display two important features: the two instances of the *if'al* form both call for the same act, and the act called for is repeatable. Where two instances of the *if'al* call for different acts, as in "Draw me some water, fetch me some bread," they clearly represent separate commands; where they call for the same act but the act is not repeatable (whether intrinsically or due to an extraneous factor), as in "Become a Muslim, become a Muslim," then the second instance clearly reinforces the first instance.

The controversy over the type of juxtaposition represented by "Draw me some water, draw me some water" appears to have emerged among the Mu'tazilīs, specifically out of a difference of opinion between 'Abd al-Jabbār and his disciple Abu'l-Husayn al-Basrī. The former maintained that the two instances represent two separate commands, the latter that they represented a single command. Thus the former took the words "Perform two *rak'as* in prayer, perform two *rak'as* in prayer" to mean that the addressee was to

perform four *rak'as* in prayer, whereas the latter took them to mean that he was to perform two *rak'as* only.

Āmidī opts for ʿAbd al-Jabbār's view. Though it is possible for the second instance of the *if'al* form to be either additive or confirmatory, it is, he thinks, more likely to be additive, since an added command is a type of constitutive speech, and all speech must be assumed as a matter of principle to be constitutive rather than confirmatory in the absence of evidence to the contrary.

Āmidī's primary concern thus far has been with the *amr*, or positive command. However, as he turns to the subject of the *nahy*, or negative command,⁴⁹ he shows himself to be fully aware that the negative command has as much importance in the business of formulating the divine law as the positive command. The reason why his treatment of it is much briefer than his treatment of the positive command—the latter, we have noted, takes up nearly eight times as many pages in the 1914 edition of the *Ihkām* as the former—is not that he deems it less important than the positive command but rather that he considers that most of what he has said with respect to the positive command can be applied to it as well. Since the positive command and the negative command are opposites (*muqābil*)—mirror images of each other, so to speak—whatever was said with respect to the former can be applied to the latter through a kind of reversal. Thus, for example, if the positive command is to be defined as “a calling for an act from a posture of superiority” (the definition favored by Āmidī), the negative command should be defined as “a calling for the omission, or nonperformance, of an act from a posture of superiority.” The same application through reversal is to be exercised with respect to the other definitions of the positive command offered by both Ashʿarīs and Muʿtazilis as well as to the critiques of those definitions. So also may the discussions of issues such as whether there is a linguistic form in the Lughā that is peculiar to the positive command and what constitutes the literal meaning of the *if'al* form be applied to the negative command through the same method (with *lā taf'al* becoming the crucial form). The same goes for most of the remaining issues pertaining to the positive command.

Though he does not wish to enter into a full discussion of the two issues just mentioned as they bear upon the negative command, he does in passing give his reader an idea as to what such a discussion would involve. The discussion of whether there is in the Lughā a linguistic form peculiar to the negative command would focus upon the *lā taf'al* form: if there is such a form, this would be it. From Āmidī's earlier discussion we become aware that the *lā taf'al* form is indeed such a form. The discussion of what constitutes the literal meaning of the *lā taf'al* form would, if the lines of the earlier discussion are followed, culminate in the thesis that this meaning is “a

calling for the nonperformance of an act" (*talab al-tark wa-iqtidā'uh*), thus justifying the opinion that, because the *lā taf'al* form has no other literal meaning, it is a form peculiar to the negative command and therefore a *zāhir* signifier. Cognizance would also have to be taken of other meanings that the *lā taf'al* form may have in actual usage. These consist of (1) forbidding, (2) disapproval, (3) disdain, (4) clarification of the consequence of an act, (5) invocation, (6) despair, and (7) advisement, all of which are supplied with Qur'ānic examples. In particular, the issue of whether the *lā taf'al* form signifies forbidding, or disapproval, or both (the last possibility rendering it a homonym) as literal meanings would have to be discussed, and one would have, as with the *if'al* form, the option (exercised by Āmidī) of suspending judgment.

Despite the considerable overlap between the discussions of the positive and negative commands, there are three issues that, according to Āmidī, are unique to the negative command. I shall touch on these only briefly. The first is whether the negative command renders a legally sound transaction or contract defective (*fāsid*, a lower order of valid transactions that stands in contrast to a higher order called *ṣaḥīḥ* and to transactions that are completely without validity, called *bātil*).⁵⁰ Or, to state the issue differently, does the *lā taf'al* form, in signifying a calling for the avoidance (*tark*, nonperformance) of a legally valid transaction, signify that the transaction is defective? Āmidī opts for a negative answer, arguing that there is no ground in the *Lughā* for an affirmative answer. The *lā taf'al* form thus is not a *zāhir* signifier of defectiveness, though it may be said to imply defectiveness by virtue of a reasoning process that Āmidī describes.

The second issue is whether the *lā taf'al* form (as the linguistic vehicle of the negative command), in signifying as the meaning of which it is a *zāhir* signifier of a calling for the nonperformance of an act, signifies as part of that same meaning that the act was previously lawful.⁵¹ Āmidī argues that it does not, which is the prevailing view among his fellow-schoolmen. He attributes the opposite view to Abū Hanīfa. On the third issue—whether the *lā taf'al* form is a *zāhir* signifier of a calling for the nonperformance of an act indefinitely—Āmidī has "the men of reason" (*al-ʿuqalā'*), who maintain that it does, pitted against a tiny minority, who presumably do not listen to the dictates of reason.⁵² Here again, it may be noted, although Āmidī himself states these issues in terms of their bearing upon the content of the negative command itself, I have phrased them, in order to maintain consistency with earlier practice, in terms of their bearing upon the semiotic functioning of the *lā taf'al* form.

As we can readily see, in his brief discussion of the negative command and of issues related thereto, Āmidī remains faithful to the tendency (observed in his much longer discussion of the positive command) to reduce the role of a key linguistic form—in this case the *lā tafʿal* form—to the minimal function of signifying a simple and basic idea, that of the calling for the nonperformance of an act, and to resist attempts to impute to this form more elaborate literal, or Lughā-based, meanings. Āmidī's thinking, as we have several times noted, emphasizes the co-functionality of lexical item and context as indicators of the divine law. As mere lexical items divorced from a larger textual matrix, the *ifʿal* and *lā tafʿal* forms tell us very little about the law. They do, it is true, alert us to the presence of a divine command, and that function is very important to the enterprise of articulating the divine law. But once the presence of a divine command has been determined, the mujtahid has only taken a first step; for divine command and divine law are not identical for the majority of Muslim jurists. Law is subsumed *under* the divine command; but so also is moral exhortation. The task of the mujtahid is, partly, to separate law from moral exhortation.

In practice, this means separating the divine categorizations of human acts as obligatory and forbidden from the other categorizations that make up the Shariʿa; for it is the former alone that can function as law, as remedy to disputes arising before earthly tribunals. In Āmidī's view, and in the view of like-minded jurists, the *ifʿal* and *lā tafʿal* forms, considered as discrete lexical items, were inadequate for this task. Contrary to what certain other jurists adamantly averred, these forms were not self-sufficient indicators of the law. Knowledge of the law—or, in its absence, considered opinion as to what the law was—could arise only out of a careful consideration of the interdependent working of form and context. One could know from the *ifʿal* form only that an act was called for, from the *lā tafʿal* form only that the nonperformance of an act was called for. For all further information one had to turn to the context. An especially crucial point of information, from the point of view of the legal enterprise, was whether the act called for was obligatory or the act to be avoided forbidden. Presumably what one sought from the context was an indication of blame (*dhamm*) for the nonperformance of a called-for act or for performance of an act whose nonperformance was called for; or one might perhaps seek an indication of peremptoriness (*jazm*) as the posture underlying the calling for the performance or nonperformance of an act.

Harking back to figures 3 and 4,⁵³ we may say that, in the process of classifying the divine speech into its various types, the *ifʿal* and *lā tafʿal* forms are helpful at the point where the mujtahid must distinguish between speech

that calls for something and speech that does not and, within the former category, between speech that calls for performance of an act (of which *if^cal* is the indicator) and speech that calls for nonperformance (of which *lā taf^cal* is the indicator). The two forms will not take the mujtahid beyond this point in the classification, according to Āmidī's way of thinking. They will, in other words, not take him to that crucial final point where law and normative morality break off from moral exhortation. Here the context must intervene, supplying indications of blame or of peremptoriness. Some jurists, we have learned, differed with Āmidī's way of thinking, confident that the two forms were capable of carrying the mujtahid all the way to the end; but these in turn disagreed as to exactly where the forms took the mujtahid, whether to law or to exhortation.

GENERAL AND UNQUALIFIED EXPRESSIONS

The determination that an act has been divinely categorized as either obligatory or forbidden constitutes, quite obviously, a task of major importance in the business of articulating rules of law and segregating them from moral exhortations. The previous chapter was concerned with Muslim jurisprudential thinking about the role of the *ifʿal* and *lā tafʿal* forms in the execution of this task. Once the obligatoriness or forbiddenness of an act has been established, the mujtahid may be said to have brought to light the most essential ingredient of a rule of law. But the rule still will not have reached the point of full articulation. Among the remaining tasks the mujtahid must turn to, one of the most important is the determination of the scope or range of the rule's application. This requires him to deal with two important types of expressions: the "general" (*ʿāmm*) expression and the "unqualified" (*mutlaq*) expression. A good example of a general expression is the expression "the thief" (*al-sāriq*) in Qurʾān 5:38 ("As for the thief, both male and female, cut off their hands"); and a good example of an unqualified expression is the expression "a slave" in Qurʾān 58:3 ("Those who put away their wives and afterward would go back on that which they have said, [the penalty] in that case [is] the freeing of a slave"). The question that a mujtahid must ponder in reflecting on Qurʾān 5:38 is whether "the thief" includes all thieves without exception, thus making the penalty of amputation applicable to all cases of theft, or whether it includes only certain thieves; if the latter, he must then wrestle with the question of which thieves are excepted and which are not. As regards Qurʾān 58:3, he must ask whether "a slave" refers to any slave whatsoever or to a certain kind of slave, such as a Muslim slave.

In glancing over the section of the *Ihkām* that deals with these two types of expressions, we discover an enormous disparity. Over two hundred pages in the 1914 edition are devoted to the general expression and related matters, whereas a measly seven pages are devoted to the unqualified expression. This quantitative disparity might easily lead us to believe that the former far

outstrips the latter in importance. However, when in the course of his brief discussion of the unqualified expression Āmidī says that his reader should apply to this expression everything he has said in regard to the general expression, we quickly come to realize that the dialectic over the unqualified expression, though briefly presented, is potentially quite long. It is, in other words, as presented in the *Ihkām*, elliptical.

Rather than attempting to redress the imbalance in Āmidī's presentation, I shall, in this chapter, adhere to his format, devoting the greater part of the chapter to matters pertaining to the general expression and related matters and touching only now and then upon the unqualified expression (but not, as Āmidī does, in a separate, though brief, section).

Before turning to the various issues relating to general and unqualified expressions, Āmidī first takes up, in typical fashion, the task of definition: he defines not only the general and unqualified expression but also their correlatives, the specific and the qualified expression. Before presenting his own definition of the general expression, Āmidī considers definitions offered by two earlier scholars, Abu'l-Husayn al-Basrī and Ghazālī.¹ The former defined it as "a vocable that embraces all of that to which it is suited."² I take "embraces" (*mustaghriq*: as a participle it may be more accurately translated as "all-embracing") to have the sense of "applies inclusively to." According to this definition, "the thief" applies inclusively to all those persons to whom it is "suited," namely, the entire class of thieves. It does not apply to upright persons, for example, since it is not "suited" to them. Āmidī finds fault with Abu'l-Husayn's employment, in this definition, of the term *mustaghriq*, which, as a synonym of *‘āmm* ("general," also translatable as "all-embracing"), renders the definition circular by including the definiendum within the definiens. Furthermore, "vocable" (*lafz*) is not sufficiently delimited—it can include composite expressions on the order of "Zayd struck ‘Amr."

Ghazālī, on the other hand, defined the general expression as "a single vocable that summarily signifies two-plus [i.e., three or more] things."³ Departing from Ghazālī's own explanation of *min jihatīn wāhidatin*,⁴ which I have interpretively translated as "summarily," later commentators took this phrase to be an exclusion of homonyms and of expressions considered as carriers of both literal and nonliteral meanings:⁵ although these two categories of expressions, like the general expression, signify a plurality of things, they do so by virtue of separate significations, while the general expression does so by virtue of a single signification. "Lion," for example, signifies the predatory feline animal and the fearless man by virtue of separate significations, whereas "the thief" signifies a plurality of thieves or of subclasses of thieves by virtue of a single signification. Thus *min jihatīn wāhidatin* seems

to acquire the sense of "by virtue of a single signification." Āmidī seems to understand the phrase in this manner, ignoring Ghazālī's own explanation, for he later explains that in his own definition he renders the phrase superfluous (*lā hājata ilayhi*) by substituting *ma'an* for it. But the main problem with Ghazālī's definition, according to Āmidī, is that in speaking of "things" it excludes what is nonexistent or impossible, while it does not exclude numbers such as ten or a hundred (as in, one gathers, "ten men").

Āmidī himself considers the general expression to be best defined as "a single vocable that signifies two-plus nominata [i.e., named items, signified items] unquantifyingly and simultaneously."⁶ To appreciate this definition, we must remember (as always) that in the intellectual culture of which Āmidī was a part the function of a definition was to distinguish the definiendum from all other objects, real or imagined (nonexistent). "Vocable" obviously excludes everything in the world that is not a vocable. "Single" (*al-wāhid*) excludes syntactic combinations of vocables such as *daraba zaydun 'amran* ("Zayd struck 'Amr"). (As we shall soon see, it does not exclude composite vocables on the order of *al-sāriq*, "the thief," or *'abidī*, "my slaves.") "Nominata" (*musamayayn*) has an inclusive function vis-à-vis Ghazālī's definition: unlike Ghazālī's "things," it includes what is nonexistent and impossible along with what exists and is necessary or possible. "Two-plus nominata" excludes unqualified expressions as well as duals, which are limited to two nominata. ("Two-plus" is thus equivalent to "three or more": it rules out "two only.") "Unquantifyingly" (*mutlaqan*, not to be confused with *mutlaq* as a designation for the unqualified expression) excludes numbers, and "simultaneously" (*ma'an*) excludes homonyms as well as expressions considered as carriers of both literal and nonliteral meaning.

The definition presupposes both a similarity between the homonym and the general expression and a difference: both signify a plurality of nominata, but the latter signifies them simultaneously while the former does not. It is important that we understand the term "nominata" (*musammayat*) as covering two very different sorts of items: universals (or classes) and particulars. When a Muslim jurist or philologist speaks of a homonym as having a plurality of nominata, he has in mind such things as "eye" and "spring" (the nominata of *'ayn* considered as a homonym). When he speaks of a general expression as having a plurality of nominata, he may have in mind particulars or universals. Thus "the thief" has as nominata, on the one hand, particular thieves (this thief, that thief, and so on) and, on the other hand, different subclasses of thieves (male thieves and female thieves, Muslim thieves and non-Muslim thieves, and so on). Another point to be noted is that a homonym may also, considered in respect to its signifying any one of the nominata by

virtue of which it is a homonym, be a general expression. Thus *‘ayn* is, in respect to its signifying “eye” (as opposed to “spring”), a general expression, signifying a plurality of nominata that fall under the heading of “eye,” whether these be subclasses such as blue eyes and brown eyes or particulars such as this eye, that eye, and so on.

Closely related to the notion of the general expression is the notion of the *ṣiḡhat al-‘umūm*, the “form of generality” (or, as I shall prefer to call it for reasons soon to be explained, the “form of general reference”). It is upon the latter that Āmidī’s discussion eventually focuses. The “form of generality” is the linguistic form by virtue of which a particular expression acquires its generality. Such a form will be present, not only in the particular expression, but in other expressions as well. Thus “the horses” and “the men,” along with many other expressions, share a form consisting of the combination of the definite article and the plural form of a noun. There are a number of such forms in the *Lughā*, and Āmidī provides a list of them that we shall consider presently.

Having defined the general expression, Āmidī turns to its correlative: the “specific” (*khāss*) expression. This category he sees fit to define in two ways in order to take account of two different senses in which a vocable may be specific.⁷ According to his first definition, a specific expression is “a single [i.e., noncomposite] vocable whose meaning is such that a plurality may not participate in it.” Examples are the proper names such as “Zayd” and “Amr.” The phrase “such that a plurality may not participate in it” (*lā yasluhu li-ishtirāk al-kathīr fih*) represents a description that is commonly applied, in the Muslim science of theoretical jurisprudence as well as in speculative theology (*kalām*), to concepts that, in more strictly Aristotelian jargon, would be said *not to be* “true of many.” Thus while both Zayd and ‘Amr (considered here as the meanings of “Zayd” and “Amr”), as well as many others, may participate in humanness, no such plurality may participate in Zayd. In other words, Zayd is a particular (*juz’ī*). A specific expression is thus, according to this first definition, a noncomposite expression that signifies a particular.

The second definition of “specific” is concerned with the expression that is specific *in a relative sense*, that is to say, in relation to some other expression. According to this definition, an expression is specific if its meaning (*maḍlūl*, significatum) is subsumed under the meaning of some other expression whose meaning also subsumes the meanings of still other expressions, all of which meanings are united under a single aspect. This complex definition is best understood from an example, which Āmidī obligingly provides. “The human being” (*al-insān*) is specific in relation to “the animal” (*al-hayawān*) in that its meaning is subsumed, along with the meanings of “the horse” and “the donkey,” under the meaning of “the animal.” The meaning of “the

animal" draws together the meanings of "the human being," "the horse," and "the donkey" (one could add others) under a single aspect, namely, animalness. Clearly, this definition takes us into the hierarchy of universals. The specific expression defined by Āmidī's first definition is clearly an expression that signifies a particular. Āmidī's second definition takes us out of the realm of particulars; we are now concerned with expressions that signify universals. The specificity of expressions that signify particulars is absolute, while the specificity of expressions that signify universals is relative. This latter specificity has to do with the relationship between universals within the Porphyrean hierarchy. An expression that signifies a universal is specific in relation to an expression that signifies a higher-level universal under which its meaning is subsumed.

Once we have understood what constitutes a general expression and a specific expression, we should, Āmidī goes on to say, take cognizance of the divisibility of expressions into three categories: those that are general in an absolute sense in that the meanings they signify cannot be subsumed under the meanings of other expressions; those that are specific in an absolute sense in that there is nothing that can be subsumed under their meanings; and those that are *both general and specific*, but in a strictly relative sense. This third category comprises expressions whose meanings both subsume the meanings of other expressions and are subsumed within the meanings of other expressions. An example is the expression "the animal" (*al-hayawān*): it is general in relation to "the human," "the donkey," and "the horse," and it is specific in relation to "the body" (*al-jism*) and "the substance" (*al-jawhar*). Many other examples could be given. There is obviously also a great abundance of examples of the second category: as the world is full of particulars, the *Lughā* is replete with expressions that refer to particulars. As an example of the first category, Āmidī gives "the mentioned" (*al-madhkūr*, possibly better translated as "the mentionable").⁸ The meaning of this expression, he says, subsumes the meanings of "the existent" (*al-mawjūd*) and "the nonexistent" (*al-ma'dūm*). "The mentioned" thus includes in its meaning whatever may be an object of thought and conversation, whether real or imagined. Since no two concepts are higher in the hierarchy of objects of thought than the concepts of existence and nonexistence, one suspects—despite Āmidī's treatment of "the mentioned" as an example (using the Arabic particle *ka*)—that there could be no other example. There thus seems to be only one instance of an expression that is general in the absolute sense.

The third category in this tripartite schema—expressions that may be either general or specific, depending on one's point of view—is obviously coterminous with the category of expressions covered by Āmidī's definition

of the expression that is specific in a relative sense (his second definition of “specific”). One may wonder why Āmidī does not give us a corresponding definition of the expression that is general in a relative sense, thus matching his dual definition of the specific expression with a dual definition of the general expression. In point of fact, Āmidī’s definition of the general expression belongs to a different order of definition than his definitions of the specific expression: it embraces both expressions that are general in an absolute sense and those which fall into the in-between (that is, the third) category in Āmidī’s tripartite scheme, namely, those that are both general in a relative sense and specific in a relative sense.

Since Muslim jurists can hardly be expected to have had any interest in expressions that are general in an absolute sense, especially if there is only one such expression or, at any rate, very few, we must conclude that it was mainly expressions in the third category in Āmidī’s tripartite scheme that his definition of the general expression was intended actually to cover (even if, formally, it covers the first category as well). Thus if we are to attempt to designate a true opposite of the general expression, as represented by Āmidī’s definition, we seem to have no choice but to designate the expression that is specific in an absolute sense as that opposite. Since the category of general expression embraces expressions that are general in a relative sense, then only the expression that is specific in an absolute sense can be its true opposite. This opposition arises from the fact that the general expression signifies a universal and the specific (in the absolute sense) expression a particular.

Earlier in this study we observed that Āmidī considered the terms “universal” (*kullī*) and “particular” (*juz’ī*) as applying properly to concepts and only by extension (through usage in the *majāz* mode) to expressions.⁹ Here we learn that “general” and “specific” are the terms that apply properly to the expressions themselves. Āmidī records a controversy over whether these latter two terms apply properly to concepts (*ma‘ānī*) as well, noting that the majority consider that they do not. Thus for the majority the reverse of what holds true of the terms “universal” and “particular” obtains in the case of “general” and “specific”: they apply properly only to expressions but may by extension apply to concepts.

Since it is the general expression as formally defined by Āmidī that is at the center of attention in Muslim jurisprudential disputation and since the expression that is specific in a relative sense, also being general in a relative sense, falls under that definition, one may wonder why Āmidī introduces the concept of the expression that is specific in a relative sense. What is the usefulness of this concept? Its usefulness becomes apparent when we consider how expressions that signify universals impinge upon one another within the

corpus of texts. If a mujtahid encounters a text that imposes a certain duty on "the people" and then encounters another text that indicates that the duty is imposed only on "the Muslims," there is a usefulness in seeing "the Muslims" as specific in relation to "the people." It is "the people" that will constitute, in the deliberations carried on by the mujtahid, the general expression against which "the Muslims" will be considered as a possible "indicator of specific reference" (*mukhassis*), an indicator, that is to say, that the intended meaning behind "the people" is not all people but only some people, namely, the Muslims. Of course, in another instance of scholarly deliberation "the Muslims" could very well constitute the general expression against which an "indicator of specific reference" might be found showing that, let us say, "the mujtahids" were really meant. "The mujtahids" would in this case constitute the specific expression vis-à-vis "the Muslims" in its representation of the real meaning of the latter expression. Or, in still another instance, "the people" could function as a specific expression vis-à-vis "the creatures" (inclusive of humans, animals, angels, and demons), representing its real meaning. I shall have much more to say about this particular intertextual operation later in this chapter.

In attempting to define the unqualified expression and the qualified expression,¹⁰ Āmidī does not, as with the general expression and the specific expression, first examine definitions of other jurists, but rather immediately presents his own definitions. For the unqualified expression he offers two different definitions, both of which he seems to regard as satisfactory. According to the first definition, an unqualified expression is "an indefinite noun [used] in the context of affirmation."¹¹ The first part of this definition ("an indefinite noun") excludes, in effect, all linguistic forms that are not indefinite nouns, thus excluding specific and qualified expressions as well as all general expressions except the indefinite noun used in the context of negation, while the second part of the definition ("[used] in the context of affirmation") excludes the one type of general expression still remaining (the indefinite noun used in the context of negation), thus narrowing down the definiendum to the desired point. According to the second definition, an unqualified expression is "a vocable that signifies that which is diffused within its class."¹² "Diffused within its class" is the crucial clause in this definition. It is best understood by paraphrasing it as "interchangeable with any other object in its entire class."

For the qualified expression Āmidī again offers two definitions, but these are not alternative definitions from which his reader is at liberty to choose whichever he prefers but rather definitions of two different senses in which a vocable might be a qualified expression. This dual definition is strongly reminiscent of the dual definition of the specific expression noted above.

According to the first definition, a qualified expression is a vocable that signifies a fully identified (*muʿayyan*) object. Āmidī gives as examples of the qualified expression in this sense “Zayd” and “ʿAmr” (both proper names) and “this man” (a combination of a demonstrative pronoun with a noun). It is significant that Āmidī gives the same proper names as examples of the specific expression as defined according to the first of the two definitions. Obviously the first of Āmidī’s two definitions of the qualified expression and of the specific expression make these two types of expressions coterminous categories.

There is also a resemblance, at least of sorts, between Āmidī’s second definition of the qualified expression and his second definition of the specific expression. The qualified expression, according to this second definition, is “a vocable that adds a qualification to that which is signified by an unqualified term.” Āmidī gives as examples “an Egyptian dinar” and “a Meccan dirham.” It is important to note that, as with Āmidī’s second definition of the specific expression, whatever satisfies his second definition of the qualified expression must be regarded as a qualified expression *in a relative sense*: it is qualified in relation to some other expression. Thus “an Egyptian dinar” is a qualified expression in relation to “a dinar.” Considered in itself and apart from its relation to “a dinar,” it is an unqualified expression; that is to say, it applies without further qualification to *any* member of the class of objects that share the property of being an Egyptian dinar.

Just as the expression that is specific in the relative sense is also, from a certain perspective, general, so the expression that is qualified in the relative sense is also, from a certain perspective, unqualified. It can be said of “an Egyptian dinar” that this expression signifies an object that is interchangeable with any other object in its class, that class being Egyptian dinars. That is to say, “an Egyptian dinar” signifies as much as “a dinar” an unqualified reference to a member of a given class. The usefulness of the category of expressions that are qualified in a relative sense arises in intertextual operations similar to those mentioned above in connection with the category of expressions that are specific in a relative sense.

While the unqualified expression is limited to a single form, namely, that indicated in the first of Āmidī’s definitions (the indefinite form of the noun), the general expression may, as I have indicated, assume any one of a variety of forms, the so-called *siyagh al-ʿumūm*, “forms of general reference” (I shall shortly explain my translation of *ʿumūm* “general reference”). He arranges them under three headings, as follows:¹³

I. Forms that are inclusive both of rational and of nonrational objects, comprised of:

1. The conditional-interrogative "which"/"whichever" (*ayyun*).
2. Plurals, both sound and broken, that are definite (that is to say, accompanied by a definite article) but whose definiteness is not linked to an understanding (*ʿahd*) between speaker and hearer that certain identifiable objects are meant. Examples given are "the Muslims" (*al-muslimūn*, a sound plural) and "the men" (*al-rijāl*, a broken plural). Both of these relate to rational objects (i.e., human beings). One could add "the dirhams" (*al-darāhim*) as an example that relates to nonrational objects. The reader should bear in mind that Arabic employs expressions of this sort in a nonidentifying manner much more frequently than does English. The speaker of English, wishing to express a generalization about the relative heights of men and women, would be inclined to say, "men tend to be taller than women" rather than "the men tend to be taller than the women."
3. Indefinite plurals, both sound and broken. For example: "Muslims" (*muslimūna*) and "men" (*rijālun*). The Arabic nunnation is, of course, the usual marker for indefiniteness. English has no corresponding marker for indefiniteness of a plural form.
4. Emphasizers (*muʾakkidāt*, nouns that accompany and give added emphasis to plurals). For example: "all" (*kull, jamīʿ*). Āmidī seems to mean that these expressions reinforce the generality (*ʿumūm*) expressed by the plural forms.
5. Common nouns (*asmāʾ al-jins*) that are definite (that is, accompanied by the definite article) but whose definiteness is not linked to an understanding between speaker and hearer that a particular object is meant. For example: "the man" (*al-rajul*) and "the dirham" (*al-dirham*). Included are instances such as occur in the statement "The dirham no longer has the value it once had," as opposed to "He put the dirham in his pocket." One can also add as an example "the thief" in Qurʾān 5:38.
6. The indefinite singular noun used in the context of denial. For example: *lā rajula*, "there is no man," as in *lā rajula fiʾl-dār*, "there is no man in the house."
7. Nouns that are the first member of a construct phrase (*idāfa*). For example: *ʿabīdī*, "my slaves," and *darāhimī*, "my dirhams." The reader should bear in mind that the first member of a construct phrase is considered to be definite. The position it occupies in the construct phrase is a marker of definiteness, just as is the definite article.

II. Forms that are inclusive of rational objects only. These include the conditional-interrogative “who”/“whoever” (*man*), as in “Whoever comes to me I will honor” and in “Who is with you?”

III. Forms that are inclusive of nonrational objects only. These include:

1. The conditional-interrogative “what”/“whatever” (*mā, mādhā*), as in “Whatever you take is yours to possess until you return it” and “What are you doing?”
2. The conditional-interrogative “when”/“whenever” (*matā*) and “where”/“wherever” (*ayna, aynamā* and *haythu, haythumā*), as in “Whenever [*matā*] you come to me, I shall honor you,” “Wherever [*aynamā, haythumā*] you are, I shall honor you,” “When [*matā*] did the people come?” and “Where [*ayna*] are you?”

Āmidī notes with respect to the last two items on his list that, whereas “what”/“whatever” is tied to no particular genus (within that of nonrational objects), “when”/“whenever” and “where”/“wherever” are tied to the genera of time and place; that is to say, the general reference of the latter pertains to units of time (times, moments, or whatever) or to places.

It should be noted that with the exception of the conditional/interrogative “which”/“whichever” (*ayyun*) and the emphasizer “all” (*kull, jamī*) all of the forms in the first of the three main categories just mentioned are forms that a potentially very large body of particular expressions have in common. For example, the definite-article-plus-plural-noun form (the second item in the first category) is a form common to particular expressions such as “the Muslims” (*al-muslimūn*), “the men” (*al-rijāl*), “the dirhams” (*al-darāhim*), “the houses” (*al-buyūt*), and so on. Similarly, the negative-plus-indefinite-noun form is common to *lā rajula, lā dirhama, lā illaha*, and so on; and the noun-as-the-first-member-of-a-construct form is common to *‘abīdī, darāhimī, kitābu ‘l-rajulī*, and so on. By contrast, in the case of “which”/“whichever” (*ayyun*), “all,” and the forms in the second and third categories form is indistinguishable from individual expression.

Where form transcends the individual expression, Muslim linguistic thought requires us to say that the individual expression is general by virtue of its form. I have elsewhere written on the application of the form-matter distinction to the *Lugha* by Muslim philology. In the case of the sorts of expressions that concern us here, the material component of an expression consists of a whole word. A good example is the plural noun such as *muslimūn* and *rijāl*. (These are themselves, it may be recalled, in turn a union of form and matter: a plural form and a triliteral root; but it is not this order of the form/matter distinction that matters here.) The definite-article-plus-plural-noun form may be superimposed upon a great variety of individual plural nouns to

create individual general expressions. With each expression, it is the form, as opposed to the material component, that makes the expression general.

The “forms of general reference” occasioned extensive debate among the Muslim jurists, as did the form that defined the unqualified expression. Āmidī, however, records the debate only as it bears upon the former, leaving it to the reader to transfer the principal issues, arguments, and conclusions to the domain of the unqualified expression. As I have already indicated, I shall adhere to Āmidī’s format in these pages.

The debate covers a wide range of issues. Among these the most crucial and most hotly debated issue is the one that Āmidī phrases as follows: “The men of learning,” he says, “disagree [over the question]: does the concept of general reference [*ma‘nā ‘l-umūm*] have in the Lughā a form that was assigned to it [in the primordial moment in which the Lughā was invented] and that is peculiar to it, signifying it [and nothing else], or not?”¹⁴ This phrasing is reminiscent of the phrasing of the foremost of the issues relating to the subject of the command: does the command have in the Lughā a linguistic form that is peculiar to it and that signifies it and not anything else?¹⁵ (“And not anything else” is, of course, intended to rule out homonymity as a possible feature of the forms in question.) As we learned from Āmidī’s discussion of the command, such an issue can be stated in a number of closely interrelated ways. These are, as they bear upon the subject matter of the present chapter, as follows:

1. Whether there are in the Lughā forms that signify general reference and nothing else as their literal sense. (Any form or expression that has only one literal meaning is, let us remember, by virtue of this univocality a *zāhir* signifier. This way of stating the issue is thus tantamount to asking whether the Lughā contains any *zāhir* signifier of general reference.)
2. Whether there are in the Lughā *haqīqa*-forms that are peculiar to general reference (meaning that they have this general reference as their sole literal meaning).
3. Whether there are in the Lughā forms that signify general reference on their own, quite apart from the context, and nothing else.
4. Whether there are in the Lughā forms that have been assigned by the inventors of the Lughā to the notion of general reference and to nothing else.

I shall in what follows adhere, for the sake of consistency, to the first of these ways of stating the issue.

The notion of forms that *signify general reference* (*yadullu ‘ala ‘l-umūm*) calls for comment. The Arabic term I am here translating as “general

reference," *ʿumūm*, is, of course, a cognate of *ʿāmm*, "general." However, whereas *ʿāmm* is for Āmidī an attribute of expressions (that is to say, vocabularies), *ʿumūm* designates something that clearly lies within the realm of meanings or ideas (*maʿānī*), of what expressions signify (*maḍlūl*). In order to grasp what this entails it is, I think, helpful to employ the distinction, borrowed from modern logic, between the notional and referential aspects of an expression's semantic functioning, between an expression's intension and its extension. Thus "the thief" in Qurʾān 5:38 signifies the idea of a thief while at the same time referring to particular thieves. Or, to put the matter in terms of class and class membership, it signifies the property that is constitutive of the class of thieves (the property of being a thief) while at the same time referring to the particular members of that class. Muslim linguistic theory explains this dual functioning in terms of the form/matter distinction noted above: it is the form of the expression that carries the referring function, while the signification of the class-constitutive idea or property is left to the material component of the expression.

ʿUmūm, I suggest, means inclusive reference—that is, reference to all members of a given class without exception, or, as I shall call it in these pages, general reference. The issue at hand is thus whether there are in the Lughā forms that signify inclusive (or general) reference and nothing else as their literal sense. The correlate of inclusive reference is, of course, noninclusive reference, that is, reference, not to the entire membership of a given class, but to an individual member or a particular set of members of that class. The Arabic designation for this type of reference, which I shall hereafter call specific reference, is *khusūs*.

It is, of course, somewhat out of line with modern usage to speak of an expression as signifying a particular kind of reference. But my purpose here is not to bring the thinking of the Muslim jurisprudents in line with modern usage but to reflect that thinking as accurately as possible through a choice of terms that most does justice to it. There is in principle no reason why we may not regard general reference as an idea that an expression or form may signify. I shall therefore in these pages not hesitate to speak in this manner.

As we proceed to read Āmidī's account of the controversy over the issue under consideration, we soon discover that the controversy is really about the forms that Āmidī has listed under the heading of "forms of general reference" (*siyaḡh al-ʿumūm*). Are these forms truly univocal—that is to say, *zāhir*—signifiers of general reference? It was apparently among those who answered this question in the affirmative that the forms were called "forms of general reference." One can thus detect a subordinate issue: may these forms be regarded as "forms of general reference" or not? Since the "forms of general

reference" were seen as inhering in particular general expressions and since it was by virtue of these forms that particular expressions acquired the status of general expressions, the issue under consideration seems to boil down to whether such a thing as a general expression really exists in the Lughā. Although Āmidī's and Ghazālī's definitions do not say so, a general expression appears to be an expression that signifies, by virtue of its form, general reference *as part of its sole literal sense*. Although it is sufficient for them, for purposes of definition, to speak of the general expression merely as signifying a plurality of *nominata* (or things), in fact the general expression signifies a plurality of *nominata* that happen to constitute the entire membership of a class. Abu'l-Husayn al-Basrī's definition of the general expression, it should be noted, comes much closer to saying this explicitly.

Quite understandably, the issue under consideration occupies more pages in the *Ihkām* than any other issue relating to the general expression. It is the only issue that prompts a truly plenary debate; it gives rise to the basic partisan divisions that arise among Muslim jurists on the subject of the general expression. With the exception of two issues that are of minor importance, all other issues related to this subject—forty-four altogether—are presented as an intramural concern of only one of the parties that emerge out of the plenary debate, those whom Āmidī calls *arbāb al-ʿumūm*, "partisans of general reference."

In his account of the debate over this issue, Āmidī deals with the "forms of general reference" in an order somewhat different from that of his original list. First, he deals with the conditional-interrogative particles (*al-hurūf al-mustaʿmala li'l-shart wa'l-istifhām*), that is to say, the particles used to express a condition as well as to ask a question. These include "which"/"whichever," "who"/"whoever," "what"/"whatever," "when"/"whenever," and "where"/"wherever." To these he adds the emphasizees such as "all." The remaining forms all include nouns as a principal ingredient. These are treated in the following order: the definite plural noun, the indefinite singular noun used in the context of denial, the noun that is the first member of a construct phrase, the definite singular noun (called the common noun, *ism al-jins*), and the indefinite plural noun. The overall structure of Āmidī's discussion thus seems to be based on the noun-particle distinction.

In their disputes over the forms in question, the Muslim dialecticians were divided into the following four positions:

1. The "partisans of general reference" (*arbāb al-ʿumūm*) maintained that these forms signified general reference and nothing else as their literal sense, while allowing that they may be diverted, in actual usage, from this literal sense to a nonliteral sense, namely, specific reference (*khusūs*),

thus becoming transformed into *majāz*-expressions. This diversion must, of course, be attested by a contextual indicator, which could exist either in the immediate context or in some entirely separate passage within the body of authoritative texts. The function of such a textual indicator was called, in the Arabic jargon employed by the partisans of general reference, *takhsīs al-‘āmm*. I shall return to this function later in this chapter.

From Āmidī’s account we may gather that the partisans of general reference were in the majority among the Muslim dialecticians. Āmidī includes among them none other than the founder of his own school of law, Muhammad ibn Idrīs al-Shāfi‘ī. Also included are “throngs” (*jamāhīr*) of Mu‘tazilis and many *fiqh* scholars (*fuqahā’*). Āmidī notes that one Mu‘tazilī who subscribed to the viewpoint of the partisans of general reference, Abū Hāshim al-Jubbā‘ī, made an exception of plurals and of the definite singular common noun.

2. The “partisans of specific reference” (*arbāb al-khusūs*) maintained that the forms in question signified specific reference and nothing else as their literal sense and that they may signify general reference only by being diverted from this literal sense, thus becoming in effect *majāz*-expressions. This diversion, again, would have to be attested by way of contextual indicators. Thus the expression “the thief” signifies not the entire class of thieves as its literal sense, but a particular set of individuals belonging to that class. This set could constitute a subclass, such as thieves who have stolen an amount worth a quarter of a dinar or more; or it could consist of the entire class with certain exceptions, such as all thieves except Zayd and ‘Amr. The precise identity of the set of thieves that the speaker has in mind cannot, it should be noted, be known from the expression itself: this requires contextual clues. What *can* be known from the expression itself is that the expression does not embrace the entire class of thieves. This is because the inventors of the *Lughā* assigned the *form* (*ṣiḡha*) of “the thief” to the idea of noninclusive (i.e., specific) reference. From the expression “the thief” we do not know precisely which thieves are being referred to, but we do know that some thieves as opposed to all thieves are being referred to.

The partisans of specific reference apparently regarded the forms found in Āmidī’s list of “forms of general reference” as being in reality specific (*khāss*) expressions rather than general (*‘āmm*) expressions. This is not to say, however, that they made Āmidī’s category of the expression that is specific in a relative sense (see above) applicable to these forms. According to Āmidī’s definition of that category, “the thief” is specific *in relation to another expression* such as “the human being,” while at the same time being general in relation to an expression such as “the adult thief.” The partisans of specific reference maintained that “the thief” is specific by virtue not of its relation to

some other expression, but of its own intrinsic reference to a set of individuals who do not constitute the entire membership of the class of thieves, such as adult thieves, or thieves who have stolen an amount worth a quarter of a dinar or more, or thieves other than certain excepted ones.

Āmidī gives no information about the partisans of specific reference, mentioning no names. We may no doubt conclude that this position had few adherents; it may even have been a straw man, used for the purpose of debate.

3. The “partisans of homonymity” (*arbāb al-ishtirāk*) maintained that the forms in question are homonymous, that they were, in the primordial moment in which the *Lughā* was invented, assigned both to general reference and to specific reference such that they signify both types of reference as literal meanings. According to Āmidī, this view was one of two views attributed to Ash‘arī. However, he makes no mention of other adherents, and we may gather, again, that they were few.

4. The “withholders of judgment” (*al-wāqifiya*) maintained that none of the above views had any conclusive arguments in its favor and that it was best to refrain from making a judgment on the issue under consideration. There was, in other words, no way to know whether general reference or specific reference or both was the literal sense of the forms in question: our knowledge of the *Lughā* is, as regards this particular matter, imperfect. This noncommittal position was, according to Āmidī, the other of the two views attributed to Ash‘arī. It was also the position of the great Ash‘arī theologian Bāqillānī. Some jurists, Āmidī tells us, adhered to this position only in regard to expressions that do not constitute commands; commands they regarded as inherently general. I shall attempt to elucidate this view more fully later.

Considered with reference to the concept of the *zāhir* (univocal) signifier, the positions of these four groups may be restated as follows. The first group regard the forms in question as *zāhir* signifiers of general reference, the second group regard them as *zāhir* signifiers of specific reference, and the third group regard them as ambiguous (*mujmal*) signifiers. The fourth group finds no argument sufficiently compelling to justify placement of the forms in any one of these three categories. Considered with reference to the question with which Āmidī begins his account of the controversy,¹⁶ the first group may be regarded as answering the question in the affirmative, the second and third as answering it in the negative, and the fourth as unwilling to give either an affirmative or a negative answer.

In addition to these four positions, Āmidī seems to mention a fifth position, one that in fact comes first in his own order of presentation. “The *Murji’is*,” he says, “hold that there is, in the *Lughā* of the Arabs, no form that is for general reference” (*anna ‘l-umūma lā sighata lahu fī lughati ‘l-‘arab*).

Since he presents the position of the partisans of specific reference as distinct from that of the Murji'is, he apparently wishes his reader to understand that the two positions are different from each other. Exactly how they differ is not altogether clear. At first glance, the notion that there is, in the *Lugha*, no form that "is for" general reference seems to represent common ground between the Murji'is and the partisans of specific reference. On the other hand, the latter group would have wished to qualify this notion with language (e.g., *zāhir fi*) that made it clear that what is absent from the *Lugha* is a form that, by virtue of its primordial assignment, signifies general reference *as its sole literal meaning*. This qualification makes it possible for a form to signify general reference through diversionary (*majāz*) usage. Since the qualification is not present in the statement of the Murji'i position, we are perhaps justified in concluding that the Murji'is denied that there was any distinct form in the *Lugha* that could signify general reference in any manner whatsoever. Whether this means that, for them, inclusive reference is altogether impossible in the *Lugha* is not clear, although this seems unlikely. In any case, the Murji'i position is not given separate treatment in the discussion that follows the statement of the basic positions, and we may conclude that for Āmidī and the Muslim jurisprudents in general it did not have much importance. Since Āmidī's discussion revolves entirely around the four other positions, we shall accordingly take only those positions into account here.

The ramifications of the positions taken by the partisans of general reference, the partisans of specific reference, and the partisans of homonymity must be fully appreciated. If one regards the expression "the thief" as constituting by virtue of its form a *zāhir* signifier of general reference, then one is saying that a mujtahid will, in deliberating over the occurrence of the expression in Qur'an 5:38, be justified in making an *ab initio* presumption in favor of general reference as the intended reference and will—upon having tried *and failed* to find any contextual indicator showing that the expression has, in the case of this verse, been diverted to a nonliteral sense (specific reference)—be proceeding correctly in formulating the divine law upon the basis of that presumption. The mujtahid may, in other words, declare that all thieves without exception are to have their hands cut off and may pass this opinion on to a judge or order its implementation if he himself happens to be in the position of a judge.

If, however, one regards "the thief" as a *zāhir* signifier of specific reference, one must then initially presume, in the case of Qur'an 5:38, that this expression is intended to refer only to certain thieves (i.e., certain members of the class defined by the property of thievery), not to all thieves. One cannot, of course, readily apply the divine law to particular cases on the basis of a

presumed specific reference if one does not know precisely which thieves are being referred to. The presumption cannot therefore in this case serve, in the absence of a contextual indicator that would overturn it, as an adequate basis for giving full articulation to the law; the mujtahid does not, in other words, have the same ability to pontificate on the law without reference to positive contextual indicators that he would have if a presumption could be made in favor of general reference, for he is dependent upon the context for information essential to his task.

The partisan of homonymity, on the other hand, is unable to make an initial presumption in favor of either general reference or specific reference, since both present themselves to him as equal possibilities. However, the situation in which he finds himself is, for all practical purposes, much like that of the partisan of specific reference, for both require a contextual indicator in order to reach the kind of starting point that allows them to undertake even a provisional formulation of the law. Since the initial presumption that the partisan of specific reference is able to make in favor of specific reference is insufficient, even when sustained by an absence of an indicator of a diversion to general reference, as a basis for the formulation of the law, this initial presumption gives the partisan of specific reference no real advantage over the partisan of homonymity. Each must have a positive contextual indicator in order for the work of formulating the law even to begin. The partisan of general reference, in contrast, is able to undertake a provisional formulation of the law in the absence of positive contextual indicators. The context has, for him, an entirely negative function: if he finds no indicator of a diversion to specific reference, he may proceed to make his provisional formulation his final formulation, which he offers to a judge or himself implements if he is a judge.

The partisan of general reference has, it may be noted in passing, much in common with those who regard the *if'al* form as a *zāhir* signifier of imposition of obligation. The reader will recall from the previous chapter that the approach taken to the formulation of the law by the latter is a rigorist one, favoring law over moral exhortation. By putting himself in the position of being able to begin his attempt at formulating the law with an *ab initio* presumption in favor of imposition of obligation as against recommendation, he in effect prepares the ground for the erection of a heavier law than that which arises out of other approaches. Similarly, the partisan of general reference gives the law a broader application, thus contributing to the law's heaviness. He, too, is by disposition a rigorist.

The partisan of general reference contributes to the heaviness of the law not only by increasing the scope of its application, but also by making the task of formulating the law easier and swifter. Though his approach entails

toil (*ijtihād*), the toil is not as great as that which is entailed in the approach of the partisan of specific reference or the partisan of homonymity. As with the one who takes the *ifʿal* form to be a *zāhir* signifier of imposition of obligation, the words actually before him (as distinct from the larger context) are a solid bed upon which to erect the law; the words, functioning apart from the context, generate probable law, and the context is examined only as a clearinghouse for this probable law. The possibility that some contextual factor will overrule an initial probability is always present, but it is deemed to be unlikely.

Āmidī himself embraces what may be regarded as a modified version of the noncommittal position. He is convinced that there are no conclusive arguments behind any of the three alternate positions. However, the absence of conclusive argument does not necessarily warrant a noncommittal stance, since on many issues in Islamic theoretical jurisprudence the dialecticians weigh the arguments for the various positions against each other and adopt the position deemed to have stronger arguments behind it than any other. Therefore, the noncommittal position in the present case requires further justification. Āmidī asks his reader to turn back to the section of the *Ihkām* in which he presented his justification for a noncommittal stance on the issue of the function of the *ifʿal* form.¹⁷ The reader need only, says Āmidī, transfer the justification presented there to the present case.

Accordingly, my reader may find it helpful to turn back to those pages in this book where the earlier justification was examined and explained.¹⁸ The central point of the justification is that the issue under consideration cannot definitely be considered to be among the *masāʾil zannīya*, that is to say, those issues that admit of resolution based on opinion. If it was clearly among those issues, then the method of weighing arguments to determine which of several positions was strongest relative to the others would be appropriate. But since this is not clear, that method is inappropriate. This is not to say that the issue under consideration belongs among the *masāʾil qatʿīya*, the issues which admit only of certain resolution. Āmidī's point is that the question of whether the issue under consideration is *zannīya* or *qatʿīya* is itself an issue that has not been resolved—and as long as it is not resolved we must allow for the possibility that it *may* be *qatʿīya* and refrain from treating it as *zannīya*. Therefore, we must demand conclusive arguments in support of any position we are to adopt, and if no such conclusive arguments seem to exist we must choose the noncommittal stance. The overall argument seems to presuppose that the issue of whether an issue is *qatʿīya* or *zannīya* is itself *qatʿīya*. One must, in other words, have conclusive arguments for regarding an issue as one or the other. Āmidī is saying in effect that he has discovered no conclusive argument

that would enable him to regard the issue at hand with absolute certainty as being either *qat'īya* or *zannīya*.

On the other hand, the noncommittal stance does not compel us to abandon all hope of ascertaining the intended reference of the disputed forms when we encounter them in the authoritative texts. Such an attitude would amount to a counsel of despair regarding the task of discovering the divine law, or, at least, of understanding its application to concrete situations. Āmidī is able to escape this nihilism by calling attention to an agreement of sorts between the partisans of general reference and the partisans of specific reference to the effect that the forms signify reference to *at least* some members of a given class. While the two parties differ in that one *limits* the reference to those members and the other extends the reference to all other members as well, this modicum of agreement is undeniable. There is a strong implication here that no Muslim jurisprudent (not even a Murji'i, apparently) has ever tried to advance arguments in favor of a complete stripping of the forms in question of all reference. Such an attempt would be nonsensical, and arguments for such an absurd point of view may be considered nonexistent. Therefore, we may, while refusing to take sides in the debate between the partisans of general reference and the partisans of specific reference, still affirm that the forms in Āmidī's list signify an intended reference to *some* members of the given class and thus facilitate the application of the law to concrete cases. The noncommittal stance is thus appropriate only with respect to the issue of whether these forms signify by virtue of their primordial assignment reference to *all* members of the given class or *only to some* members.

The practical result of this stance is that the forms in question may be treated in much the same way as the partisans of specific reference treat them. That is to say, when one encounters one of these forms in the texts, one may make a presumption in favor of specific reference as the intended reference. One may then search the context to see whether this presumption stands. If there are clues indicating a general reference, then such a reference must be accepted. It is not necessary to regard this contextually determined general reference as part of the literal sense of the form (as the partisans of general reference do). While the context frequently serves to establish deflective usage (producing a *majāz-expression*) as against ordinary usage, this is not its only function. Here it serves to clarify something that is otherwise unclear because of uncertainty arising out of dialectic over a major hermeneutical issue.

In turning to the arguments used by the first three of the four parties mentioned above, Āmidī informs us that his general strategy, in dealing with these arguments, will be the same as that adopted in respect to the arguments of

the various parties in the debate over the meaning of the *ifʿal* form. The reader may recall that his strategy in that earlier context was to show that the various arguments were productive only of opinion. Had the issue under consideration been clearly a *masʿala zanniya*, opinion would have been decisive; the job of the dialectician would have been to weigh arguments for the various positions against each other to see which produced the strongest opinion, the highest degree of probability. But since it was not altogether clear that the issue under consideration was indeed a *masʿala zanniya*, the search for the strongest opinion had no justification. Even though one could not affirm with absolute confidence that the issue was *masʿala qatʿiya*, one had to treat it *as though it were such*. Āmidī's description of the arguments he examines as *shubah*, "specious arguments," should be understood in the context of this general strategy. The arguments are specious in the sense that they do not accomplish the goal of full certitude. While elsewhere "specious" can mean "productive of weak opinion, which is overruled by some stronger opinion," here it has the sense of "productive of mere opinion as opposed to certainty." In other words, "specious" here means "inconclusive."

As might be expected, Āmidī deals most extensively with the arguments of the partisans of general reference.¹⁹ Since this group represented the majority of Muslim jurists, a great deal of attention had been given over the centuries to providing arguments to support its way of thinking, and a great deal of attention would thus have to be given to refuting those arguments. Āmidī arranges the arguments in accordance with the familiar typological scheme. First, therefore, come arguments that appeal to the Qurʾānic and Sunnaic texts (*nass*), after which follow arguments that appeal to the *Ijmāʿ* and arguments that rest upon "rational" considerations. The arguments of the last type are the most numerous. In describing them as resting upon "rational considerations," I am influenced by Āmidī's use in the *Muntahā* of the word *maʿqūl*. In the *Ihkām*, on the other hand, he describes these arguments as *maʿnawī*. While this word may mean different things in different contexts, here it seems to have the sense of "meaning-related." The arguments to be considered are meaning-related in the sense that they have to do with the determination of the sense (in this instance reference, which, as we have noted, the Muslim jurists place within the sphere of an expression's sense) of expressions on the basis of considerations having nothing to do with the revealed texts or with the consensus. The arguments are "rational" inasmuch as they do not fall in the category of text-based arguments (whether Qurʾānic, Sunnaic, or *Ijmāʿic*). They include a kind of reasoning with respect to the ordinary semantic functioning of expressions.²⁰

In reality, all the arguments reviewed by Āmidī have to do with the semantic functioning of expressions. The difference between them is that some of the arguments attempt to establish a fact about semantic functioning on the basis of a text, while others do so on the basis of consideration of other sorts of factors. To show this difference, we may take as an example the command "Whoever enters my house, show him respect." If a master issues this command to his slave, we may speculate about whether "whoever" in "whoever enters my house" univocally signifies reference to some or to all persons who enter the house on the basis of what we normally—that is to say, in ordinary speech situations—understand from such a command when issued by a superior to his inferior. If we believe that we can find in ordinary speech situations evidence that "whoever enters my house" does indeed univocally signify reference to all persons who enter the house, we have produced what Āmidī calls a "rational" (*ma'qūl*) or "meaning-related" (*ma'nawī*) argument. If it happened that "Whoever enters my house, show him respect" were found in a Qur'ānic or Sunnaic text (which is quite likely not the case), we might then wish to look for evidence in the text itself that "whoever enters my house" univocally signifies reference to all who enter the house. Let us say that the text reports that someone, upon hearing these words upon the lips of the Prophet, proceeded, without further ado, indiscriminately to show respect to people as they entered the Prophet's house, an action that presupposed that "whoever" did indeed univocally signify reference to all and not to some. If the Prophet approved this action (whether explicitly or tacitly), he in effect provided authoritative proof that "whoever" univocally signified reference to all. From this we then conclude (erroneously, Āmidī would say) that "whoever" is a *zāhir* signifier of general reference. Or let us say that instead of a report of this sort in the text we have an Ijmā'ic consensus to the effect that "whoever," as used (in our hypothetical example) by the Prophet, univocally signifies a general reference. Again, we conclude (erroneously, according to Āmidī) that "whoever" is a *zāhir* signifier of general reference.

In dealing with a speech situation involving the Prophet and some other human being, we are dealing with an encounter of a superior with an inferior with the important additional circumstance that the superior in this case is a prophet whose verdict enjoys a divine sanction. In reality, the line between speech situations involving the Prophet and speech situations not involving the Prophet is a thin one. One can legitimately seek to determine the sense, or reference, of an expression used in either situation on the basis of "rational" considerations. However, the situation involving the Prophet has the added advantage that it allows for determination of the sense or reference through appeal to prophetic authority.

As we examine the arguments from the Qur'ānic and Sunnaic texts, we discover that they entail a common strategy: they attempt to show that certain expressions appearing in the Qur'ān were understood by the persons to whom they were originally addressed to have signified a general reference as their sole literal sense and that this understanding was confirmed as correct by God or by the Prophet. The confirmation, like the expressions themselves, is found, as might be expected, in the texts. Āmidī cites three such arguments, each of which employs a particular Qur'ānic passage. The paucity of these arguments suggests that passages that could be employed in the manner just indicated were not abundant. The passages actually employed are the following:

1. "We are about to deliver you and your people" (*innā munajjūka wa-ahlaka*, 29:33).
2. "Surely you and what you worship apart from God are fuel for hell" (*innakum wa-mā ta'budūna min dūni 'llāhi hasabu jahannama*, 21:98).
3. "Surely we are about to destroy the people of that city" (*innā muhlikū ahli hādhihi 'l-qarya*, 29:31).

Since the first and third of these passages are in fact adjacent to each other, we may consider them together. The argument that employs the first passage makes use of another Qur'ānic passage to show that Noah understood "your people" to signify univocally a general reference. That other passage (11:45) reads: "And Noah cried unto his Lord and said: My Lord! My son is of my people! Surely your promise is the truth." This passage, so runs the argument, shows us that Noah laid hold (*tamassaka*) on God's words in an attempt to spare his son. "Laying hold on God's words" appears to have the sense of relying utterly on the unambiguous literal sense that God's words have, quite apart from any consideration of anything other than the words themselves. Had the expression "your people" not signified a general reference univocally, it would have made no sense for Noah to "lay hold" on God's words for the purpose of saving his son. God, we are told, confirmed Noah's understanding when he said, "O Noah! He is not of your people; he is of evil conduct" (11:46). God here obviously redefines "Noah's people," but he does not challenge the general reference of this expression.

In the case of the third of the above-mentioned passages, it is Abraham who, according to the verse immediately preceding, understands "the people of that city" to signify a general reference univocally, for Abraham immediately expresses concern over the fate of Lot, which would make no sense if general reference was not the sole literal sense. That is to say, if Abraham had not taken inclusion of all people to be the sole literal sense of "the people of that city," he would have had reason to suppose that Lot was not among

those people and would have taken comfort in the thought that Lot, by virtue of his uprightness, would be spared. As things stood, God's words arouse concern over Lot's safety, and God consoles Abraham by assuring him that an exception will be made of Lot. We shall take up the matter of exception-making shortly. Here the point is that by making an exception of Lot God demonstrates that Abraham was justified in having concern for Lot because of his use of the expression "the people of that city." God has, in other words, vindicated those who are convinced that the *Lugha* contains linguistic forms that signify general reference as their sole literal sense such that they may be regarded as *zāhir* signifiers of general reference.

The problem with these arguments, according to Āmidī, is that they do not give serious enough consideration to the possibility that Noah and Abraham understood the expressions "your people" and "the people of that city" to be all-inclusive from contextual clues, not from the expressions themselves. One can explain perfectly well the responses of Noah and Abraham, as well as the divine confirmations, in a manner that does not require that general reference be part of the sole literal sense of these expressions. The Qur'anic passages do not require us to regard Noah as laying hold on God's words without consideration of the context and Abraham as having concern for Lot solely on account of God's words. That the general reference, or all-inclusiveness, of "your people" and "the people of that city" is divinely confirmed cannot be denied. That this means that general reference is part of the sole literal sense of these expressions and can be grasped without any help from the context can, however, be denied.

Āmidī's response to the arguments just considered raises a point that comes up again and again in his handling of arguments from the *Ijmā'* and "rational" arguments. One cannot know with full certainty that an expression signifies general reference univocally unless one can rule out with full certainty the possibility that contextual clues have entered into the awareness of this general reference. This is very difficult if not impossible to do. And so long as it cannot be done, we are not able to transcend the level of mere opinion. As we have noted, the issue under consideration is not among the issues that can be resolved on the basis of opinion. We shall reflect further upon the significance of this point later in this chapter.

The argument that employs the second of the above-mentioned Qur'anic passages runs as follows. A certain Ibn Zibā'ra, wishing to challenge the Prophet, said to him, "The angels and the Christ have been worshipped. Do you think they will enter the fire?" This question assumes that the "what" in "what you worship" signifies all-inclusiveness unambiguously—otherwise the challenge would have made no sense. The Prophet, it is argued, did not

object to this assumption, thus in effect confirming Ibn Zibā'ra's understanding. Āmidī seems to dispose of this argument rather easily. The Prophet did not object to this assumption because he did not need to in order to meet Ibn Zibā'ra's challenge. He was able to deal with it in another way: by pointing out that "what" applies only to nonrational objects and therefore cannot apply to rational beings such as the angels and Christ.

The arguments from the Ijmā' resemble the arguments from Qur'ānic and Sunnaic texts in respect to their having to do with expressions found in those texts. The difference between these two types of arguments lies in the fact that the former find authoritative confirmation of general reference as the sole literal sense of these expressions in the Ijmā', whereas the latter find this confirmation in the texts themselves. The Ijmā'ic consensus appealed to is invariably a tacit consensus. A particular Companion treats a particular expression as though it unambiguously signified an all-inclusive reference, and none of the other Companions voice objection. This silence indicates their consent, and from this consent an Ijmā'ic consensus is inferred. Āmidī gives many examples and suggests by his "et cetera" (*ilā ghayr dhālika*) that many more could be given, but I shall not take up the reader's time with them. He refutes them all with essentially the same argument as that leveled against the arguments from the Qur'ānic and Sunnaic texts: we cannot rule out the possibility that the general reference of the expressions in question was inferred by the Companions from contextual clues.

Āmidī's procedure in dealing with the "rational" (or "meaning-related") arguments is first to examine an argument of a general nature, one that has equal relevance to all of the disputed forms, the so-called forms of general reference, and then to turn to arguments having to do with particular forms.

The general argument appeals to a principle that we have previously encountered in arguments having to do with what exists or does not exist within the *Lughā*: the principle of the functionality and rationality of the *Lughā*. The *Lughā* is by its very nature designed to meet the needs of intercommunication between human beings; these needs are fundamental to the very existence of the social order. Among these needs is the need to communicate the notion of general reference, of all-inclusiveness. If human beings are unable, when using expressions on the order of "the thief," "the thieves," and so on, to communicate unambiguously to one another their intention to include all individuals belonging to the class under consideration, their communication is seriously defective. Since the primary concern of the founders of the *Lughā* was to facilitate intercommunication (*tafāhum*) and thus to promote the social order, it is empirically impossible that they would not have provided *zāhir* signifiers of general reference. It may be noted that this argument utilizes the notion of empirical

impossibility—that is to say, impossibility defined as a departure from divinely ordained and empirically observable regularities—in order to produce an implicit *reductio ad absurdum*: those who deny the existence of forms that signify general reference univocally entangle themselves in an impossibility.

In responding to this argument, Āmidī acknowledges the principle appealed to. Most medieval Muslim jurists would have acknowledged it. The *Lughā* is indeed designed to serve vital needs of human society, and the need for a means of signifying general reference is among them. However, this is not to say that inventors of the *Lughā* were able to satisfy this need only by assigning a particular form exclusively to the notion of general reference such that it would signify general reference univocally. There is a need for human beings to speak to one another about the smell of musk or the taste of honey, and the *Lughā* satisfies this need, not by providing a single expression for such things, but by making it possible for human beings to put existing expressions together into phrases (“the smell of musk,” “the taste of honey”) that will enable them to speak about such things. The same is true of the need for signifying general reference. This need does not require that there be forms that have been assigned, in the primordial moment of invention, exclusively to the notion of general reference, as long as there are forms that can signify general reference with the help of the context in the manner of *majāz*-expressions or homonyms.

Among the “rational” arguments having to do with particular forms, one has been alluded to already. This argument arises, in Āmidī’s discussion, in connection with the word “whoever,” although the argument seems applicable to other forms as well. It appeals to our ordinary understanding of what “whoever” refers to when used by a superior in issuing a command to an inferior. Thus, for example, if a master says to his slave, “Whoever enters my house, show him respect,” we shall ordinarily understand the master to be intending, by his use of “whoever,” inclusion of all persons who happen to enter the house. That this is so is evident from the fact that if the slave proceeds to show respect for some who enter the house but not for others (say those whom he knows not to be on good terms with his master) we shall consider him deserving of blame and, therefore, of punishment, whereas if the slave shows respect for all (including even those whom he knows not to be on good terms with his master) we shall not consider the slave as deserving of blame but shall rather blame the master, should he proceed to punish the slave. These responses would not occur if all-inclusiveness were not the unambiguous literal sense of “whoever.”

Situations involving a social hierarchy—the superior-inferior relationship—are quite naturally of special interest to jurists concerned with

deriving law from divinely revealed texts, for behind all such texts is the divine speech, which is by definition addressed by a superior to inferiors. Therefore the understandings we have of speech addressed by human superiors to their inferiors will shed special light upon the import of the divine speech. But situations involving a social hierarchy also offer the advantage that we may use the factor of blameworthiness as a barometer of our understanding of the import of the speech of superiors. Our judgment as to the appropriateness or inappropriateness of blame in a given situation is logically dependent on how *we* (not to mention the social inferior) understand the speech of the superior in that situation.

There is another kind of judgment that reflects our understanding of the speech of the superior, and that is our judgment as to the appropriateness or inappropriateness of a request for clarification. If the slave, upon hearing his master say, "Whoever enters my house, show him respect," asks the master whether he means by "whoever" all who enter the house without exception or just some, we shall judge the question to be inappropriate and pointless: the slave should know, without having to ask, that the master intended a reference to all who enter the house. This judgment is, of course, related to the judgment as to the appropriateness of blame, since an inappropriate question entails an unjustified delay in compliance with the command, rendering blame appropriate. However, the issue of the appropriateness or inappropriateness of the question arises not only in respect to situations involving a superior and an inferior but also in respect to situations involving peers.

The general line of argumentation just recounted is repeated later in Āmidī's account with reference to "every one" (*kull man*). One gathers that it would be applicable to other forms as well. A master might conceivably say to his slave, for example, "Show respect to my relatives," in which case he will be understood (for all the reasons indicated above) as intending by his use of "my relatives" a general reference to all of his relatives, even those with whom he may not be on good terms.

But the argument proves, under Āmidī's scrutiny, not to be airtight. True, we understand from the command "Whoever enters my house, show him respect" that the slave is to show respect to all who enter. Our judgment that blame is appropriate if the servant does not show respect to all and that a request on the slave's part for clarification is inappropriate does indeed reflect this understanding. However, this is not to say that we understand this all-inclusiveness from the word "whoever" itself. One can as reasonably argue that we understand it from a contextual factor, namely, the custom of showing respect to guests. According to this custom, anyone without exception who enters a house must be shown respect *as a guest*. The slave will understand

from his master's words that the master wishes him to follow the custom. The argument thus goes wrong in taking our ordinary understanding of "whoever" as signifying an intended general reference to be evidence that "whoever" signifies a general reference univocally.

The custom of showing respect to guests does not, of course, function as a contextual clue for all usages of the word "whoever," not to mention usages of other forms in Āmidī's list of "forms of general reference." His critique implies that the contextual clue will vary from case to case: the custom of showing respect to guests is merely an example, which applies to "Whoever enters my house, show him respect."

A second "rational" argument crops up, in Āmidī's presentation, in connection with several different forms: "whoever," "all," the indefinite singular noun used in the context of denial, and the indefinite plural noun. In the case of all these forms, it is clearly appropriate for a speaker to add an exceptive phrase, as in "Whoever enters my house, show him respect unless he be an iniquitous person," or "Release all the captives except the ones who have attempted escape." But exceptive phrases, runs the argument, can be appropriate only if the terms "whoever" and "all" signify a general reference as their sole literal meaning, for that which is excepted (*al-mustathnā*) must be clearly included in that from which the exception is made (*al-mustathnā minhu*). If these terms do not univocally signify a general reference, then the possibility arises that the objects excepted are not among their referents; and such a possibility undermines the rationality of exception-making.

The rebuttal of this argument shows us in a most striking manner the lengths to which the medieval Muslim jurists could go in defending a particular position. That which is excepted need not, we are told, belong to the same genus as that from which it is excepted: to use the Arabic terms, a *mustathnā* need not belong to the same genus as a *mustathnā minhu*. That being the case, there is no need to fret over the question of whether the term that signifies the *mustathnā minhu* must also univocally signify a general reference, since it need not signify a general reference at all. The locus classicus used in support of this line of thinking is the Qur'ānic statement, "They have no knowledge thereof except pursuit of a conjecture" (*mā lahum bihi min 'ilmin illā 'ttibā'a 'l-zann*, 4:157). The *mustathnā* in this statement (conjecture, or the pursuit thereof) clearly belongs to a genus different from that represented by the *mustathnā minhu* (knowledge).

It is important to understand, I think, that this view of exception takes it outside the sphere of conceptual relations and places it entirely within the sphere of grammar. Exception becomes nothing more than a particular sequence of words: one term is connected to another term by means

of “except” (*illā* or an equivalent). The rules of Arabic grammar, according to this way of looking at exception, permit this sequence to occur whether the meanings involved entail separate genera or a common genus. The fundamental issue is therefore one of *usage*, and whatever is to be found firmly embedded in acceptable usage may not be questioned.

But even if one made the qualification that a general reference is necessary *only in cases of exception that involve a common genus*, one would still not be secure against rebuttal, for even where a common genus is involved one need not demand general reference in order to make sense out of exception. What is required for a rationally coherent exception is not that the thing excepted be actually included in that from which the exception is made (which may or may not be the case) but rather that it be *suitable* to be included. Thus if a master says to his slave, “Show respect to all who enter my house except those who are iniquitous,” it is not necessary that the iniquitous persons who enter the house be among the referents included in the literal sense of “all who enter my house”; rather, it is only necessary that those iniquitous persons be eligible to be among those referents. Here is a distinction of great subtlety but one that is nonetheless of crucial importance in rebutting what might otherwise be a decisive argument in a debate over an issue of the greatest moment for Islamic theoretical jurisprudence.

But if I say, “So-and-so owes me ten dirhams except one,” surely I must regard the one dirham excepted as actually rather than as potentially included among the referents of “ten dirhams.” To this the reply is that one must make a distinction in the case of a statement such as this—which represents a special kind of statement, one expressing a mathematical fact—between mathematical necessity and suitability (or eligibility) for inclusion in something from which exception is made. Both are operative in statements of this sort, but only the latter is relevant as a justification for use of an exceptive phrase.

It is not surprising that we find among the “rational” arguments discussed by Āmidī several that pertain exclusively to “all” (*kull, jamī*). “All” takes on special importance among the so-called forms of general reference (*siyagh al-ʿumūm*) inasmuch as it can seem to suggest a general reference more strongly than any other of these forms. One gathers that the partisans of general reference sensed that if they could not provide solid arguments for this form in particular their entire case would be lost. We should perhaps also allow for the possibility that some of the partisans of general reference insisted upon general reference as the sole literal meaning of some of the disputed forms but not all of them. Āmidī does not tell us that this is so, but his procedure of discussing arguments under the heading of the forms to which they relate, repeating when necessary any argument that relates to more than

one form, suggests that a separate dialectic was devoted to each form. This being the case, we may surmise that a jurisperit could conceivably be on one side of the fence in the dialectic over one form and on the other side in the dialectic over another form. But "all" was certainly a form that the partisans of general reference would have adamantly regarded as signifying general reference univocally.

The arguments for this position are as follows:

1. If someone were to say, "I saw all those who were in town," his statement would be presumed false if in fact he had seen only some of those who were in town. The truth of a statement lies in the correspondence between what it purports and what is in fact the case. Our presuming the above statement to be false shows that we understand "all" as univocally signifying a general reference; otherwise, there would be no discrepancy between what the statement purports and what is actually the case and no consequent basis for the presumption of falsity.
2. The statement "All people are scholars" is presumed to be the contrary of the statement "All people are not scholars"; but these statements can be presumed to be contraries only if "all" univocally signifies a general reference.
3. We have the feeling of a difference between "all people" and "some people"; if "all people" did not univocally signify a general reference, we would not have this feeling.

With regard to the first argument, Āmidī simply denies that we would necessarily presume the statement "I saw all those who were in town" to be false if the speaker had in fact seen only some of those who were in town. He uses a contrary example to show that the opposite can sometimes be the case. If someone said, "The sultan gathered together all the merchants, artisans, and officers," we would not customarily consider the statement to be false if in fact a few merchants, artisans, and officers were absent from the gathering.

As for the contradiction between "All people are scholars" and "All people are not scholars," this is not something that may be presumed from the word "all" itself. If there is a contradiction, it will emerge from contextual evidence that the speaker using the word "all" intends a general reference. That "all" does not of its own accord—that is to say, apart from the context—engender the probability that a general reference is intended by the speaker (as would necessarily be the case if such a reference was part of its sole literal sense) is evident from the fact that if someone said, "All people are scholars," and then later explained that he meant to include every last person without a single exception we would regard his explanation as appropriate and not as superfluous.

Finally, we have the feeling of a difference between “all people” and “some people” because “some people” *never* applies to the whole class of entities called “people,” whereas “all people” is capable of being applied either to the whole class or to what is less than the whole.

Whereas the arguments of the partisans of general reference are divisible into three different argument-types, the arguments of the partisans of specific reference all appear to fall under the heading of “rational,” or “meaning-related,” arguments.²¹ The first of these insists that we must, in seeking to determine whether a particular form univocally signifies general or specific reference, limit ourselves to what is certain. We cannot be certain that “the men,” for example, univocally signifies a reference to all men, for the reasons given above in the criticism of the position of the partisans of general reference. Even if it is established that this signification is a probability (as opposed to a mere possibility), this is not enough to settle the debate, given that it has not been established that the issue at hand is *mas’ala zannīya*. We can, however, be certain that “the men” univocally signifies a reference to *at least* some men, for it would be absurd to suppose that it univocally signifies no reference to men whatsoever. But, as Āmidī points out, our certainty that “the men” univocally signifies reference to at least some men cannot be regarded as a positive proof that “the men” univocally signifies reference to some men *only*, that it does *not*, in other words, univocally signify reference to all men, for this amounts to regarding this certainty as a positive proof that “the men” can signify reference to all men only by way of defective usage. The argument, in other words, extracts more than is warranted from our certainty that “the men” univocally signifies reference to *at least* some men. (To grasp this argument it is important to have a sense of the difference between “at least some men” and “some men only.”)

The partisans of specific reference say that we must take into account the fact that in actual usage the forms in the list of so-called forms of general reference (such as “the men,” etc.) more often signify specific reference than general reference. If we say—as do the partisans of general reference—that specific reference belongs to the category of nonliteral meaning, we make usage in the *majāz* mode more frequent than usage in the *haqīqa* mode. To this one may respond, says Āmidī, first of all by simply challenging the claim that the forms in question more often signify a specific reference: the contrary, it may be argued, is in fact the case. But even if it was not, one can dispute the assumption that usage of a form in the *majāz* mode may not be more frequent than usage in the *haqīqa* mode. One can in fact cite examples of words that are more frequently used in their nonliteral sense. *Shujāʿ* is such an example: though its literal sense is “snake,” it is more frequently used in the nonliteral sense of “a daring person.”

Well, then, say the partisans of specific reference, let us look at the use of these forms in situations involving a social hierarchy. If a master says to his slave, "Show respect to the men," or "Whoever enters my house, give him a dirham," or "Whenever a poor person comes to you, give alms to him," or "Whenever Zayd comes, show him respect," it is not appropriate for the slave to ask the master whether he means for the order to be carried out in some cases: rather, it is only appropriate for him to ask the master whether he means for the order to be carried out in *all* cases. Therefore, the forms in question ("the men," "whoever," "whenever"; others could have been added) should be considered as univocally signifying only that concerning which it is not appropriate to ask a question, namely, specific reference (that is, reference to some rather than to all). The reply: the fact that it is appropriate to ask whether a general reference is intended in the use of a form does not rule out the possibility that a general reference constitutes the sole literal sense of that form. It is often appropriate in conversation to ask whether a literal or nonliteral sense was intended. The inappropriateness of the slave's asking the master whether or not he had in mind that the order be carried out in some cases has to do with the certainty that the master must indeed intend at least this, but this does not in itself indicate that inclusion only of some and not of all cases constitutes the sole literal sense of the forms in question.

Turning to the partisans of homonymy—that is to say, to those who consider the disputed forms to have been primordially assigned both to general and to specific reference—Āmidī attributes to them two arguments.²² In actual usage, argue these jurists, the disputed forms sometimes have a general reference as their intended sense and sometimes a specific reference. They may, in fact, be just as likely to have one type of reference as the other as their intended sense such that neither may be initially presumed *to the exclusion of the other* to be the intended sense in a given case: both are "principal" (*asl*) in actual usage. This being the case, we must regard both types of reference as literal senses of the disputed forms: both are triggered in the mind of a hearer upon hearing these forms so that a kind of confusion occurs until resolved with reference to the context. The forms are therefore homonymous. Āmidī responds to this argument with a *reductio ad absurdum*. If the forms are homonymous, then we shall always depend upon a contextual indicator to know exactly what sort of reference a speaker is intending in employing one of these forms, and the whole rationale behind the invention (*wadʿ*) of the Lughā is defeated.

It is curious that Āmidī here uses the principle of utility to demolish the position of the partisans of homonymy when, earlier in the *Ihkām*, he defended the notion of homonymy as a general phenomenon of the Lughā,

denying that the principle of utility could be used against it.²³ One is tempted to conclude that homonymity is, for Āmidī, a more serious impediment to communication when it relates to signification of general reference and specific reference than when it relates to other types of semantic functioning. However, another possibility presents itself. In the earlier dialectic over homonymity, Āmidī does not claim finality for this view. He favors the presence of homonymity within the *Lughā* as more likely than its absence. The whole discussion seems to presuppose that the issue is *ma's'ala zannīya*. In the present context, we are, as has been noted, dealing with a dialectic whose *zannīya* status is open to question. Therefore, the arguments against homonymity as a general phenomenon of the *Lughā*, though weak and indecisive, here have a force that they do not have in the earlier dialectic. They are sufficient to render the opposing view less than fully conclusive. This gives to both sides of the issue a measure of inconclusiveness.

The second argument of the partisans of homonymity attempts to establish the homonymity of the disputed forms by considering a hearer's response to a speaker's use of any one of these forms. The hearer may quite appropriately ask the speaker, "Do you intend a reference to all members of such-and-such class or only to some members?" This request for clarification would not be appropriate if the form used was not homonymous. Āmidī makes short shrift of this argument by pointing out that it is not homonymity alone that makes a request for clarification appropriate. One can just as well argue that the hearer is seeking to know whether a literal sense *as against a nonliteral sense* is intended. The possibility of usage in the *majāz* mode looms above most words and forms in the *Lughā*. A request for clarification is therefore almost always justified.

Finally, Āmidī turns to the arguments used by those jurists who suspended judgment on the issue under consideration but only with reference to expressions that do not constitute commands.²⁴ We noted earlier that these jurists regarded commands as inherently general. This suggests that they regard the *if'al* form as univocally signifying a general reference. Before considering their arguments and Āmidī's responses, we must first be certain that we understand their viewpoint. Āmidī does not include the *if'al* form in his list of disputed forms (the "forms of general reference"). The jurists in question appear to have viewed the *if'al* form as entailing in the manner of a vocative a reference to the persons addressed. (They may have had primarily in mind plural forms [e.g., *if'alū*], although it should be kept in mind that the singular *if'al* can have a plurality of addressees when used in connection with a generic singular vocative [e.g., "O man!"]). According to a consensus of scholarly opinion, all human beings were placed under a

charge—were, to use the Arabic expression, *mukallafūn*—by virtue of divine imperatives addressed to all. In other words, any human being, upon hearing a divine imperative, knows *from the imperative itself*, without any need for contextual clues, that he is among those being addressed. This knowledge presupposes a general reference which the *ifʿal* form signifies univocally and which may be presumed to be intended by the one uttering it in the absence of a contextual indicator to the contrary. Nonimperative forms of expression—contained in statements of fact, promises, threats, and so forth—do not entail such a presupposition.

ʿAmidi responds to this argument by attempting to turn the tables on those who use it. If we argue that the *ifʿal* form must signify a general reference univocally for reasons having to do with the notion of being under a charge, we shall be constrained to admit that these same reasons apply to certain expressions other than the *ifʿal* form and that we must regard these expressions also as signifying a general reference univocally. Thus we are charged to be aware that God is the creator of all things without exception and that he is cognizant of all things without exception; but this charge, we now must admit, presupposes that the expression “all” that appears in Qurʾānic statements to this effect univocally signifies a general reference. We are also charged to be aware that the threats and promises contained in the Qurʾān (those that do not employ the *ifʿal* form) apply to all human beings without exception; but, again, this charge, it would have to be argued, presupposes that a general reference is part of an unambiguous literal sense of these threats and promises. ʿAmidi, of course, cannot admit to the validity of these conclusions, and his rebuttal must therefore be regarded as a *reductio ad absurdum*.

The jurists in question offer a second argument for regarding the *ifʿal* form as univocally signifying a general reference (in the sense just explained of addressing all human beings). Since a command lays a charge (*taklif*) upon people, rendering them responsible agents,²⁵ it must be absolutely clear so that the individuals addressed will know precisely what they are being charged with. Individuals cannot be charged with what is beyond their knowledge. For this reason, for every vague expression that appears in connection with a command (such as “prayer” in “Perform the prayer”), there must necessarily be a contextual indicator that clarifies its meaning. The argument thus stated seems to be elliptical. What it seems to imply is that vagueness in the case of the *ifʿal* form is not of the sort that can be readily resolved through contextual clarification; such vagueness is therefore not possible. Accordingly, the *ifʿal* form must be regarded as univocally signifying general reference, since to regard it in any other way is tantamount to affirming that an individual may be under a charge without knowing that he is under

a charge. Āmidī responds by attacking the premise of the argument, namely, that it is impossible for individuals to be charged with what is beyond their knowledge. This is a premise that has not been proven and therefore, he says, need not be accepted. The entire discussion, we should note, is linked to the discussion of whether it is possible for an individual to be charged with what is beyond his capacity.

Thus all the arguments that the various parties muster to prove that the disputed forms univocally signify a general or a specific reference, or homonymously signify both, or that the command in particular univocally signifies a general reference turn out, under Āmidī's scrutiny, to be inadequate; an unqualified suspension of judgment emerges in the end as the only viable position. As I stated previously, this does not entail agnosticism in regard to the reference of the disputed forms, since the principle that the part is contained within the whole allows the mujtahid to make a presumption in favor of an intended reference to at least some objects or persons. In practice, therefore, those who suspend judgment are able to treat the disputed expressions in the same manner as do the partisans of specific reference. The difference between these two parties to the debate has to do mainly with analysis, not with actual interpretative procedures. For the partisans of specific reference, a contextual indicator either confirms the literal sense (specific reference) of a form or shows that this sense has been set aside in favor of a nonliteral sense (general reference); for those who suspend judgment it simply shows whether specific reference or general reference is intended, without entailing an identification of one sense as literal and the other as nonliteral. Such an identification is, for this latter group, of no consequence.

Having completed his account of the Muslim dialectic over the disputed forms, Āmidī embarks upon a lengthy discussion of a host of issues debated among the partisans of general reference. It may at first seem curious that Āmidī, who does not count himself a partisan of general reference, should devote such a large section of the *Ihkām* to what were ostensibly intramural debates of this group. He says nothing about similar intramural debates among members of other groups he has mentioned, including the group to which he himself belongs. In order to understand Āmidī's way of proceeding, we should bear in mind that the partisans of general reference were the largest of the four major groups that participated in the debate over reference. Their own intramural debates would therefore have engaged a wide circle of jurisprudents throughout the world of Islam. And Āmidī's purpose in writing the *Ihkām*, we must remember, is not only to present his own views or the view of groups to which he belong, but also to give a comprehensive account of Muslim dialectic on a wide spectrum of issues in the science of theoretical

jurisprudence. He is, in fact, willing to give his views even with respect to issues debated among the partisans of general reference. His doing so entails, of course, an assumption *for the sake of argument* that the principal thesis of the partisans of general reference is correct. In taking sides in intramural debates with a group to which he does not belong, Āmidī is to a large extent arguing *ad hominem*. Furthermore, Āmidī is seeking throughout the *Ihkām* to acquaint his reader with the full gamut of the Muslim dialectic in the science of theoretical jurisprudence so that the reader—who may be presumed to be an aspiring dialectician—can master the disputational skills upon which effectiveness within the Islamic religious sciences depended.

Rather than attempting to deal with all of the issues debated among the partisans of general reference that emerge in Āmidī's account, I shall for the sake of brevity concentrate on certain selected ones. In so doing, I shall use my best judgment to choose issues having the greatest theoretical importance within the science of theoretical jurisprudence. However, before proceeding, it will be useful first to take note of an important distinction relating to the contextual indicators that alert us to instances of deviative signification (i.e., signification in the *majāz* mode) of specific reference.

Since we are from this point on concerning ourselves with jurists who regard the expressions on Āmidī's list of disputed forms as univocally signifying general reference and consequently accept the notion of general expressions, I shall in the following pages adopt their practice of speaking of general (‘*āmm*’) expressions. (To call expressions general is, as I have suggested, tantamount to acknowledging that they do signify general reference as part of their sole literal sense.) As we have noted, a general expression may be used in the *majāz* mode to signify specific reference. This specific reference will be evident from contextual indicators called, in Arabic, *mukhassīsāt* or *adillat takhsīs al-‘āmm*: “indicators of specific reference.” *Takhsīs al-‘āmm* means literally “making the general specific.” In rhetorical terms, the phrase means “diverting a general expression from its literal sense [general reference] to a nonliteral sense [specific reference].” The indicators of specific reference comprise two main classes: attached indicators and detached indicators.

Attached indicators are indicators that are syntactically linked to a general expression.²⁶ These include (1) exceptive phrases such as “except those who are tall” in “Show respect to the Banū Tamīm except those who are tall,” (2) restrictive conditions such as “if they enter the house” in “Show respect to the Banū Tamīm if they enter the house,” (3) restrictive attributes such as “tall” in “Show respect to the tall Banū Tamīm,” and (4) restrictive limits such as “until they enter the house” in “Show respect to the Banū Tamīm until they enter the house.” “Banū Tamīm” in all these examples is, for the partisans of

general reference, a general expression. The indicators (“except those who are tall,” etc.) tell us that the general reference that “*Banū Tamīm*” would otherwise signify has been set aside in favor of a nonliteral specific reference.

Detached indicators of specific reference include all indicators that are not embedded in a syntactic matrix along with the general expression, that is to say, all indicators other than the four types just mentioned. Such indicators may, in fact, be quite remote, within the authoritative texts, from the general expression to which they pertain. An example is one given earlier: the Prophet’s saying, “There is to be no amputation except where an amount worth a quarter of a dinar or more has been stolen.” This saying, which is found within the corpus of Sunnaic narratives, indicates (according to most jurists) that “the thief” in Qur’ān 5:38 signifies a specific, not a general, reference. Detached indicators quite obviously play a much more crucial role in the formulation of the divine law than attached indicators; however much the import of attached indicators may be debated, these indicators are at least easily identifiable. A mujtahid can scan the syntactic context of a general expression easily: he can tell in a single glance whether an indicator of specific reference is to be found in it or is not to be found. The matter is settled instantly. However, the presence or absence of a detached indicator can be extremely difficult to determine, since this requires scrutiny of the entire corpus of authoritative texts.

It should be noted that indicators of the sort I have just mentioned—both attached and detached—play an important role in the formulation of law, not only for the partisans of general reference, but for other jurists as well. For the partisans of specific reference, such indicators have the function of clarifying what is vague. “The thief” in Qur’ān 5:38 signifies, in the view of this group of jurists, a specific reference, but leaves it in a state of vagueness: that is to say, it signifies reference to some, but not all, thieves without letting us know precisely which thieves are being referred to. Indicators of the sort represented by the Prophet’s saying quoted in the previous paragraph clarify the specific reference by informing us that it is a reference to those thieves who have stolen an amount worth a quarter of a dinar or more. Once the mujtahid has combed the entire corpus of authoritative texts and has located to the best of his ability all the indicators that could enter into the clarification of the scope of reference of “the thief,” he may consider the vagueness of this reference to have been eliminated. The partisans of homonymy likewise may use such indicators for purposes of clarification. In this case the clarification is sought in order to eliminate ambiguity.

One may ask: why does Āmidī discuss at such length the function these contextual indicators have in the thinking of the partisans of general

reference, scarcely touching upon the function they have in the thinking of other groups? The answer is that he does touch at least indirectly on the latter but in a different section of the *Ihkām*, for the subject of clarification of vagueness and ambiguity—called in Arabic *tabyīn*—constitutes a heading within the agenda of the science of theoretical jurisprudence that is entirely distinct from that of “making a general expression specific” (*takhsīs al-‘āmm*).

Altogether the issues having to do with reference that appear in Āmidī’s account number forty-six. As I stated earlier in this chapter, forty-three of these are presented as an intramural concern of the partisans of general reference (though certain of them are, notwithstanding, of interest to other groups). Of the total of forty-six issues, twenty-five are placed within a section entitled “Concerning the concept of the general and the specific expression” (*fī ma‘nā al-‘āmm wa’l-khāss*), while the remaining twenty-one are placed within a section entitled “Concerning the determination that a general expression signifies specific reference” (*fī takhsīs al-‘āmm*). Of the issues that are the intramural concern of the partisans of general reference, then, twenty-two fall under the former rubric and twenty-one under the latter.

In treating the issues that fall under the rubric “Concerning the concept of the general and the specific expression,” I shall confine my attention to nine such issues. Seven of these have to do with what may be called the limits of the general reference signified by certain kinds of expressions. The other two have to do with matters of a different sort.

I shall begin with these latter two issues, the fourth and the fifth issues in Āmidī’s overall order of treatment of the twenty-five issues. One of these—Āmidī’s fourth—is introduced as follows:²⁷ “The partisans of general reference disagree over whether the general expression, once it has been subjected to a *takhsīs*, is to be regarded as *haqīqa* or *majāz* in its signification of the resulting [literally, remaining] reference.” *Takhsīs* is, as I have suggested, the determination, on the basis of contextual indicators, that a general expression signifies a specific reference, instead of the general reference that is part of its literal sense. Āmidī takes up the subject of *takhsīs* as a subject in its own right in the subsequent section of the *Ihkām*; he presupposes, however, in the present context that his reader understands something about the concept.

As we proceed into Āmidī’s discussion of this issue, we soon discover what it is really about. The reader will recall that the partisans of general reference for the most part considered that when a general expression is used, in any given text, to signify a specific reference it is to be regarded as *majāz* in relation to that reference. That is to say, it is to be regarded as having been diverted from the general reference proper to it to a nonliteral reference, namely, the specific reference. Now we discover that not all of the partisans of

general reference agreed with this way of thinking. Although espoused by the majority, it by no means enjoyed a monopoly.

We thus find, in all, three principal viewpoints interacting with each other in Āmidī's account. According to one, when a general expression is used to signify a specific reference, that reference may not under any circumstances be regarded as nonliteral and the expression as *majāz*; the reference must, in other words, always be regarded as lying within the literal sense of the expression. This, Āmidī tells us, was the view of the Hanbalis and of some of his own fellow Shāfi'īs/Ash'arīs. Since jurists who held this view also regarded general reference as lying within the literal sense of general expressions, they seemed in the eyes of their critics to treat the general expression in much the same manner as the partisans of homonymity. The second view—that of Ghazālī and of many Mu'tazilis and Hanafis—was that when a general expression is used to signify specific reference this reference is to be regarded as nonliteral in all situations. The third view was that it is to be regarded as nonliteral in some situations but not in others.

Jurists who held this last view were further divided in their determination of those situations in which the specific reference is literal and those situations in which it is nonliteral. Some Hanafis, says Āmidī, hold that it is literal in all situations in which it is a reference to a plurality of things; it is, in other words, nonliteral only when it is a reference to a single object (or, for those who regard plurality as beginning with three, to one or two objects). This way of thinking so limits the situations in which the specific reference is nonliteral as to bring it very close to the first of the three principle viewpoints mentioned above. Other jurists hold that the specific reference is nonliteral only in situations in which the indicator of the specific reference (*dalīl al-takhsīs*) is nonverbal (i.e., rational or inferential). This view likewise severely limits the situations in which the specific reference may be regarded as nonliteral.

Other jurists are hesitant to speak of the specific reference as nonliteral only in regard to situations in which the contextual indicator of the restricted reference is an attached indicator. For Bāqillānī and Abū'l-Husayn al-Basrī, for example, it makes no sense to say that "except for the Banū Tamīm" in "I will show respect to whoever enters my house except for the Banū Tamīm" is an indicator that "whoever enters my house" signifies a reference that is nonliteral. An exceptive phrase, according to them, is embedded in a syntactic structure that must be regarded as constituting in its totality a carrier of meaning. Thus whenever "except for the Banū Tamīm" is joined within a single syntactic matrix to "whoever enters my house," the two phrases must be regarded as *together* signifying a reference to persons other

than the Banū Tamīm who enter the house. This reference is proper, not to the phrase "whoever enters my house" as such, but to the total structure of which the phrase is part. It is not, in other words, a nonliteral reference. Situations involving detached indicators, on the other hand, are seen entirely differently by these jurists: in all such situations one may speak freely of the specific reference as a nonliteral reference. Thus, for example, the word "the thief" in Qur'ān 5:38 has, by virtue of the prophetic saying "There is to be no amputation except where an amount worth a quarter of a dinar or more has been stolen," been diverted from its proper (general) reference to a nonliteral (specific) reference. One cannot argue that "the thief" together with this prophetic saying constitutes a single unit that carries in its totality a specific reference. The two textual data are too far removed from each other to allow that kind of argumentation.

Āmidī, though not himself a partisan of general reference, tells us that if he was he would adopt the view that whenever a general expression is used to signify a specific reference it must always be regarded as *majāz* and the reference as nonliteral. He justifies this posture with the following argument. If a reference to the whole of a class of objects constitutes the literal sense of a general expression, then the expression can signify a reference to a part of the whole only by virtue of a contextual indicator. This reference to the part will necessarily constitute either the literal or the nonliteral sense. It cannot constitute the literal sense, since this would mean that the expression would have two distinct references as literal senses in the manner of a homonym, and it would then cease to have any *apparent* (*zāhir*) reference, any reference that the mujtahid could presume *ab initio* to be intended in any given case. One would, in other words, depend upon a contextual indicator in order to make any presumption at all as to the reference, and this would defeat the whole purpose of the partisans of general reference. Any partisan of general reference who says that a specific reference signified by a general expression constitutes the literal sense of the expression, whether in all situations or in some, is not true to the school of thought to which he claims to belong: he has deprived the general expression of an apparent reference and has thus gone the way of the partisans of homonymity, who consign the general expression to the realm of the vague and ambiguous.

In response to those jurists who argue that a general expression must, in the context of an attached indicator, be treated as part of a larger structure that carries the intended reference, Āmidī argues, in effect, that this way of thinking makes havoc of the notion of the general expression and, again, defeats the purpose of the partisans of general reference. General expressions are frequently accompanied by words or phrases included in the

usual list of attached indicators. Consider, for example, how often a general expression is accompanied by the so-called restrictive attribute. If we say that in all these cases the general expression does not have a reference proper to itself as a distinct lexical item, then we deprive it of much of its effectiveness as an element of the *Lughā*.

The fifth issue is whether a mujtahid may, having determined on the basis of a contextual indicator that a given general expression signifies a specific reference as its intended sense, proceed to formulate the divine law on the basis of that specific reference.²⁸ Or, to use terminology closer to Āmidī's: may the mujtahid regard the general expression as having probative value (as being *hujja*) "with respect to what remains" (*fī mā baqiya*), that is, its specific reference? On this issue the jurists are divided between three main opinions: some (the *fuqahā*) say that the specific reference always has probative value, others (ʿĪsā ibn Abān and Abū Thawr) that it never has probative value, and still others that it has probative value in some cases but not in others.

Among jurists belonging to the third group a difference of opinion arises as to when the specific reference has probative value and when it does not. Āmidī attributes to Balkhī the view that it has probative value only if the contextual indicator is an attached indicator; if the contextual indicator is a detached indicator, then it can have no such value. We may readily guess the line of thinking underlying this viewpoint: a detached indicator of a specific reference seems to be, for Balkhī, much like an abrogator. We shall consider the subject of abrogation in a later chapter. Here we need only note that some jurists did seem to assimilate *takhsīs al-ʿāmm* to abrogation. We may best understand their way of thinking with reference to an example that has been previously cited, Qurʾān 5:38 ("As for the thief, both male and female, cut off their hands"). "The thief," we have learned, is commonly regarded as signifying a specific rather than a general reference as its intended sense because of the prophetic saying, "There is to be no amputation except where an amount worth a quarter of a dinar or more has been stolen." The jurists presently under consideration treat the prophetic saying as canceling out altogether the relevance of "the thief" as a signifier of reference. This is not to say that a mujtahid could not formulate the divine law as calling for cutting off the hands of thieves who have stolen items worth a quarter of a dinar or more. Such a construction is possible but must be based on the prophetic saying or other texts.

It should be noted that Balkhī and like-minded jurists are not saying that "the thief" in Qurʾān 5:38 does not have, in the light of the prophetic saying cited, a specific reference. What they are saying, rather, is that this

specific reference does not have probative value for the mujtahid who is seeking to formulate the divine law. Āmidī makes it clear that all of the partisans of general reference regarded general expressions as *subject to* diversion to a specific reference. One could speculate that the divine Legislator intended a specific reference, in the case of “the thief” in Qur’ān 5:38, but this speculation was, for the jurists under consideration, of no relevance to the formulation of the divine law.

Perhaps there was a feeling, among these jurists, that any such specific reference was too conjectural or too vague to be given relevance. The formulation of the divine law was, let us remember, based on the mujtahid’s sense of probability, of preponderance. How could one reasonably claim, on the basis of a prophetic saying that was completely detached from Qur’ān 5:38 and was no doubt fairly remote from that verse within the context of the Prophet’s lifetime, that the Divine Speaker, upon revealing the word “the thief,” actually *intended* a specific reference? Who would reasonably claim that a human author, upon employing some general expression, intended a reference other than that proper to the expression and support his claim with a passage found in a much later writing by the same author? While a specific reference lay within the realm of possibility, was it not equally possible, if not positively more likely, that the author intended only the reference that was proper to the expression (and the theory, let us remember, called at all times for a presumption in favor of what was proper to an expression in the way of a literal meaning or reference) and that he was in the later passage contradicting (perhaps abrogating) this intended reference? I am here reconstructing a line of thought that Āmidī does not supply for us, but I think my reconstruction is well founded.

Where the indicator of specific reference was an attached indicator—that is to say, an indicator syntactically linked to the general expression—the matter was entirely different. Who could reasonably deny that a speaker in stating that “all men except those of the Banū Tamīm are to be honored” intended a specific reference for “all men”? Accordingly, the jurists under consideration maintained that in such situations the specific reference of a general expression did have probative value. And yet at least two jurists mentioned by Āmidī—Īsā ibn Abān and Abū Thawr—refused to accord the specific reference probative value even in these situations. Āmidī does not provide us with the rationale for their point of view. The analogy with abrogation does not seem to hold here, since abrogation is a relationship between separate texts. On the other hand, this view does suggest that “except those of the Banū Tamīm” in some sense cancels out altogether the reference of “all men.” We are left here with unanswered questions.

Abū ‘Abd Allāh and ‘Abd al-Jabbār developed a different way of distinguishing between those cases in which the specific reference of a general expression had probative value and those cases where it did not. According to Abū ‘Abd Allāh, the specific reference had probative value only if the mujtahid could be guided by the general reference proper to the general expression. For example, we know from various indicators that “the polytheists” in Qur’ān 9:5 (“Slay the polytheists”) signifies as its intended sense a specific reference to those polytheists who are not *dhimmīs* (polytheists who have entered into a covenant with the Islamic state), not a general reference to all polytheists. In determining which polytheists are to be slain, we engage in a kind of subtraction: we exclude *dhimmīs* and apply the sword to all polytheists other than *dhimmīs* who fall within the general reference of “the polytheists.” Although it is not, strictly speaking, the function of contextual indicators to subtract from an otherwise general reference (as we shall see), some such subtraction takes place in the mind of the mujtahid in determining which polytheists remain within the reference. In putting non-*dhimmī* polytheists to the sword, one is in the final analysis being guided by the general reference of “the polytheists.”

The case of Qur’ān 5:38 is entirely different, according to Abū ‘Abd Allāh. Here an authoritative text is subject to indicators that lay down certain conditions that are not apparent from the text itself. These indicators tell us that the penalty of amputation may be applied only if the stolen item has been under some kind of protection and only if it is of a certain value or quantity. These conditions require us to transcend the import of “the thief” altogether: they have to do with the stolen item, not with the persons guilty of the theft. It is thus not now the case that we need only exclude certain thieves (say, thieves under a certain age) and apply the penalty of amputation to all other thieves included within the original and proper reference of “the thief.” The notion of a thief who has stolen an item that was kept under guard and that exceeded the specified value or amount does not, in this way of thinking, represent a type of thief such that thieves of this type may be subtracted from the general reference of “the thief”: that the item stolen be kept under guard and be of a certain value or quantity is not part of the definition of “thief.” In putting to the sword non-*dhimmī* polytheists, one is putting them to the sword on account of their being polytheists. However, in applying the penalty of amputation to a thief, one is not applying this penalty simply on account of the thief’s being a thief.

‘Abd al-Jabbār develops a somewhat similar line of thought. The specific reference assumed by a general expression has probative value only if the general expression is such that, if we were to adhere to its proper general

reference, without taking into account other texts, we would be doing something intended for us to do *along with* something not intended for us to do; otherwise, the specific reference does not have probative value. In other words, the diversion to specific reference, in cases where specific reference has probative value, eliminates something that is extraneous to what is intended for us to do. An example is, again, Qur'an 9:5 ("Slay the polytheists"). If we adhere to the general reference and slay all polytheists, we would be doing something intended for us to do (i.e., slaying non-*dhimmī* polytheists) along with something not intended for us to do (i.e., slaying *dhimmīs*). The situation is quite different with Qur'an 2:43 ("Perform the *salāh*-prayer"). If we were to adhere exclusively to the general reference of "the *salāh*-prayer," not taking into account texts that mention conditions relating to ritual purification, we would not be doing what is intended for us to do while doing what is not intended. We would, in fact, be doing entirely what is not intended for us to do. Therefore, there is no specific reference for "the *salāh*-prayer" that has intrinsic probative value.

It should be noted that the examples cited in connection with the views of Abū 'Abd Allāh and 'Abd al-Jabbār all entail detached indicators. One gathers that these two jurists regarded specific reference involving attached indicators as having probative value and that they differed from Balkhī in regard to specific reference involving detached indicators: in contrast to Balkhī, they were unwilling to regard the latter type of specific reference as being without probative value in all cases.

Āmidī is convinced that the first of the above-mentioned groups—those who maintain that the specific reference assumed by a general expression always has probative value—have the strongest arguments on their side. These consist of two primary arguments, one based on the Ijmā', the other on rational considerations. Various Companions of the Prophet are known to have appealed to the specific reference of general expressions; since we have no record that any of the other Companions objected to this practice, we must infer that there was an Ijmā'ic consensus in favor of it. Āmidī gives examples I shall not here go into.

The rational argument proceeds from a point agreed upon by all of the partisans of general reference: prior to the appearance of an indicator of specific reference it is the general reference of a general expression that has probative value. Now, it is axiomatic that probative value is something that endures until canceled by a contrary, and in the absence of such a contrary we must assume that none exists. Therefore, it stands to reason that, since the specific reference represents *a part of* a larger reference that originally had probative value and since there is no known contrary that cancels out the probative

value of *that part*, the specific reference must be regarded as having probative value. The mujtahid may therefore proceed to formulate the divine law on the basis of it.

We may now turn to the issues having to do with particular kinds of expressions, the sixteenth through the twenty-second issues in Āmidī's order of treatment. Four of these—the sixteenth, seventeenth, twenty-first, and twenty-second—have to do with forms of speech used to address a live audience. Such forms of speech—principal among which is the vocative—appear frequently in the authoritative texts on the basis of which the law is to be formulated. The audience addressed may be either a single individual or a group.

We may best be able to grasp the issues that such speech raises if we begin with the twenty-second issue:²⁹ whether phrases such as “O people!” (*yā ayyuhā 'l-nās*) and “O believers!” (*yā ayyuhā 'lladhīna āmanū*) are addressing only the original live audience, that is to say, the contemporaries of the Prophet, or are addressing both the original audience and all subsequent generations. The reader will recall from an earlier chapter that it is the addressed speech of God that contains the all-important categorizations (*ahkām*) of human acts. Only addressed speech can be efficacious as commanding or charging speech or as speech that imposes obligation, recommends, renders neutral, disapproves, or forbids; for if commands, impositions of obligation, recommendations, and so on, do not have an audience they are without import. Phrases such as “O people!” and “O believers” therefore raise an issue of the greatest magnitude. They appear with considerable frequency in the authoritative texts; the concordance of Muhammad Fu'ād 'Abd al-Bāqī indicates 151 occurrences of one or the other of these phrases in the Qur'ān alone, and it is especially frequent in those parts of the Qur'ān that are most rich in indicators of the divine law. It could be argued that these phrases, together with occurrences of the second-person pronoun or verbs in the second person (as are all verbs in the imperative mood), give to many, if not most, of the authoritative texts the character of speech addressed to a live audience. The issue this raises is reducible to the question of how we are to account for the bearing that the authoritative texts have upon persons who were not part of the original live audience.

From Āmidī's discussion, it becomes clear that some jurists—Āmidī mentions the Hanbalīs as being among them—considered that the solution lies in considering all generations of Muslims to be part of the audience along with the original audience. Phrases such as “O people!” and “O believers!”—it was argued—had a general reference to all people and all believers without exception. Although the Arabic term *zāhir* nowhere appears in Āmidī's discussion, it is clear that the jurists in question

understood these phrases to be univocal signifiers of a general reference conceived to be inclusive of all generations such that reference only to the original audience constitutes a specific reference for which indicators are required. Accordingly, the mujtahid, upon encountering such a phrase in the authoritative texts, was, in their view, entitled to make a presumption in favor of a transgenerational audience for whatever commands, warnings, statements, and so forth, followed the phrase. He should then, as with all presumptions based upon literal meaning, search the larger context for indicators that might negate this presumption; in the absence of such an indicator he could then proceed to formulate the law on the basis of the presumption of a transgenerational audience. The great majority of jurists, however, preferred a stricter view of the referring function of phrases such as "O people!" and "O believers!" Since such phrases reflect a setting of direct face-to-face encounter with a live audience, we must regard them as signifying a general reference inclusive only of persons belonging to that audience. Furthermore, it must be recalled that minors and the mentally incompetent of the Prophet's generation are generally excluded from audiences addressed by these phrases. If they with their experience of face-to-face encounter with the Prophet are excluded, how much more should persons of later generations for whom this experience is not possible be excluded!

Āmidī does not make it clear whether "face-to-face" (*shifāhan*) is to be taken literally so as to exclude contemporaries of the Prophet who happened not to be present when given words were originally spoken or more broadly so as to include all contemporaries, both those actually present and those capable of being present, who, upon hearing the words related to them by others, understood these words to be no less directly addressed to them than to those actually present. However, the overarching concern of the discussion with generations that lived after the time of the Prophet suggests that the entire generation of contemporaries was included in the face-to-face encounter. In a certain sense, the Prophet may be said to have addressed, throughout his prophetic career and by virtue of his prophetic office, *all* living Muslims on a face-to-face basis.

Again, one gathers from Āmidī's discussion that the jurists in question are thinking in terms of reference that is proper to (part of the unambiguous literal sense of) the phrases "O people!" and "O believers!" Their position seems to be that these phrases univocally signify a general reference inclusive only of persons living at the time of the Prophet. But how, then, do we establish a bearing of the words addressed to the first generation of Muslims upon subsequent generations? They, too, must in some sense be among the ranks of persons addressed by these words. If they are not a

part of the audience *stricto sensu*, how may they be included among the persons who have been addressed by the divine speech and who, as a result, have become subject to the divine law (*mukallaf*)? As we noted in an earlier chapter, to be subject to the law is tantamount to being addressed by the Divine Legislator. The Islamic conception of the covenant between God and man is closely linked to the concept of addressed speech (*khitāb*); it affirms that all descendants of Adam are in a situation of covenantal encounter with deity, a situation of being addressed by that deity. However, this addressing of all mankind occurs exclusively through words originally heard upon the lips of the Prophet Muhammad. If people of all generations cannot in some sense be said to be addressed by those words, then the universality of the Prophet's mission—a cardinal tenet of Islam—may be said to be in doubt.

Āmidī resolves this problem as follows. The divine speech (wherein lies the divine law) is, it is true, addressed to some people—the original audience—in a setting of direct, face-to-face encounter with the Prophet; but it is addressed to others—all subsequent generations—by means of indicators found within the speech uttered in the presence of the original audience as well as by means of analogies drawn therefrom. (Even members of the original generation of Muslims, presumably, were to some extent addressed by these means, in addition to being addressed through live encounter.) In this way the greater part of mankind comes within the reach of the divine law and the universality of the Prophet's mission is preserved. One need not be addressed directly by being part of the original audience; one may be addressed indirectly through the deliberations carried on by mujtahids.

Āmidī's use of the phrase "speech addressed on a face-to-face basis" (*al-khitāb al-wārid shifāhan*) in this discussion suggests that he makes a distinction between speech that is thus addressed and speech that is addressed in an indirect manner. Speech addressed on a face-to-face basis has as its audience only those persons upon whose ears the speech falls, who are a literal audience, a body of hearers. However, speech addressed through indirect means, which reaches people through the deliberations of transmitters and mujtahids, gives rise, no less than speech addressed in face-to-face encounter, to a body of addressees (*mukhātabūn*), an audience in an extended, nonliteral sense. The jurists who sought to include all generations within the literal sense of "O people!" and "O believers!" apparently saw this approach as the only way of guaranteeing that the body of addressees be transgenerational; the majority, however, opted for another way.

One may wonder why Āmidī does not include vocatives on the order of "O people!" and "O believers!" in his list of "forms of general reference" since all parties to the discussion of vocatives agreed that they univocally signify

a general reference, notwithstanding their disagreement as to what was included within this reference. An explanation does not readily present itself. I can only guess that the disagreement had something to do with the exclusion of vocatives from the list.

But there was another question relating to phrases such as "O people!" and "O believers!" that had to be dealt with: was the Prophet himself to be included among the people or believers referred to (the twenty-first issue in Āmidī's order of treatment)? The majority of jurists, says Āmidī, answered this question in the affirmative. Clearly, they had in mind occurrences of these phrases in the Qur'ān. Although the words of the Qur'ān appear in face-to-face encounter between the Prophet and the original audience, the real addressor is God; and the Prophet must therefore be counted among the addressees. When such phrases appear within sayings of the Prophet himself, the addressed speech of God may be said to be mediated through addressed speech of the Prophet. Insofar as the Prophet is addressor, he is presumably not among the addressed; insofar as God is the addressor, the Prophet is among the addressed. Since the issue has little bearing on the formulation of the law, I shall not give further attention to it here.

More apropos to the formulation of the law is the question of whether speech that is specifically addressed to the Prophet should be treated as addressed to the entire community at the same time (the sixteenth issue).³⁰ Or, to state the problem as a reference-related problem: should vocative phrases in the Qur'ān that make mention of the Prophet be taken as univocally signifying a general reference embracing both the Prophet and the community (consisting, apparently, of all the Prophet's contemporaries)? Abū Hanīfa and Ahmad ibn Hanbal and their followers, Āmidī tells us, answered in the affirmative, while the others answered in the negative. Examples of such vocative phrases are as follows: "O you enwrapped in your raiment! Keep vigil the night long" (Qur'ān 73:1–2); "O you shrouded in your mantle, arise and warn!" (74:1–2); "O Prophet, fear God and obey not the unbelievers and the hypocrites" (33:1); "It has been revealed to you and to those before you: If you associate other gods with God, your work will fail" (39:65).

Again, we gather that the issue has to do with what constitutes the unambiguous, literal reference of such vocative phrases, as opposed to the non-literal reference. The position attributed to Abū Hanīfa and Ahmad ibn Hanbal is that the mujtahid must, upon encountering such a phrase in the Qur'ān, make a presumption in favor of a general reference inclusive of the Prophet and the community; only when there is a positive indicator of reference to the Prophet alone may the mujtahid depart from this presumption, in which case he will not have a real basis upon which to formulate law for

his fellow-Muslims. The contrary position reverses this procedure: the mujtahid must make a presumption in favor of a reference to the Prophet alone and depart from this presumption only when he has a clear contextual basis for doing so. He must, in other words, have a contextual indicator in order to proceed with the task of formulating law.

Āmidī considers this contrary position—that of his own fellow-schoolmen—to have the strongest argument behind it. The linguistic forms used to address a single person were originally assigned, in the primordial moment of invention of the *Lughā*, to this specific reference. Therefore, they may not be regarded as *zāhir* signifiers of a reference to any other person or persons than the one directly addressed. For this reason, if a master gives a command to his slave, it is initially understood that this command is not directed to others. Moreover, a command may have a rationale that relates specifically to one person and not to others. For example, if a physician commands someone to take a certain medicine, the command will be beneficial to that one person but possibly harmful to others, since people differ in respect to physical condition. Similarly, certain commands given to the Prophet had rationales relating exclusively to him and his mission. Therefore, when a mujtahid encounters a command to the Prophet in a text, he must take into account the possibility that it had behind it a rationale peculiar to the Prophet and should not automatically apply it to persons other than the Prophet. He may, it is true, find behind a particular command to the Prophet a rationale that applies to the whole community (which is certainly the case with Qurʾān 33:1 and 39:65, quoted above, as well as with 65:1 and 33:37, which Āmidī cites later in his discussion); but in this case he will be applying the command to the community on the basis of an analogy, not on the basis of an inclusive reference proper to a vocative phrase or second-person singular pronoun.

But is it not the case that if a higher authority says to the leader of a community, “Go forth to fight the enemy,” the command will immediately be understood to apply not only to the leader but also to the community? And is it not established that the Prophet Muhammad was a model for his community, so that commands that pertain to him also pertain to his community, unless there are indicators to the contrary? Yes, of course, says Āmidī; but we know that the commands apply to the community in these cases not from the language alone but from other factors. A command addressed to a leader is not necessarily at the same time addressed to the community. One can, for example, say, without violating the canons of the *Lughā*, “The leader was commanded, but his followers were not.”

But why does the Qurʾān in 33:50 take extra precaution to make it clear that the Prophet and he alone is permitted to marry wives in excess of four? Why

does it say, "[This is] a privilege for thee only, not for the [rest of] the believers"? If the forms of address used (here the second-person singular pronoun) univocally signified a reference to the Prophet alone, the Qur'an, which never lapses into superfluity, would not have added this extra phrase. To the contrary, says Āmidī, there is every reason to add this phrase: it is there to prevent the mujtahid from attempting to extend the privilege of further marriage to the rest of the community on the basis of analogy.

Much the same sort of discussion arises in regard to passages in which the Prophet addresses particular individuals within the Muslim community. The issue is whether a case can be made for general reference: the Hanbalis are, in this instance, the only identified group that argues for general reference; the majority deny it. The debate is much like that touched upon in the preceding paragraph and need not be recounted here. The end result is that forms of address used to address a single individual (whether the Prophet or some other) do not find their way into the list of generally accepted (among the partisans of general reference) "forms of general reference" (*siyagh al-ʿumūm*).

Finally, we may consider three issues (Āmidī's eighteenth, nineteenth, and twentieth) that relate to expressions that *are* included in the list of generally accepted "forms of general reference." All three issues have to do with what may be called the limits of general reference of the expressions in question. These limits, in turn, have to do with two factors: sex and personal status. More specifically, they have to do with whether the general reference proper to certain expressions embraces females and slaves.

The issue of the inclusion of females arises in connection with two types of expressions:³¹ the plural that bears the mark of the masculine gender (eighteenth issue) and the indefinite pronoun "whoever" (nineteenth issue). In regard to the former, Āmidī records a majority opinion to the effect that females are not included. Exception is taken by the Hanbalis and a few isolated jurists of other schools. Āmidī is careful to distinguish the expressions at issue from the plural (such as *al-rijāl*, "the men") that is clearly limited by its sense to a particular sex and from the plural (such as *al-nās*, "the people") that neither is limited by its sense to a particular sex nor bears a gender-marker. There is no dispute in regard to these latter forms: "the men" clearly refers only to males and "the people" clearly refers both to males and females. As an example of the type of expression at issue Āmidī gives, at the beginning of his discussion, *muslimūn*, a masculine plural noun. But it becomes clear as the discussion proceeds that the debate is also over masculine plural pronouns, both those that are "manifest" (e.g., *hum*, "they") and those that are embedded (*mustatir*) within verbs (e.g., *qāmū*, "[they] arose"). Singular forms are obviously not in dispute: *muslim* (as opposed to *muslima*)

and *huwa*, “he,” for example, are understood by all to refer to a single male individual, never to a female.

The majority opinion (shared by Shāfiʿīs, Ashʿarīs, and many Hanafīs and Muʿtazilīs) is supported with the following arguments. If *muslimūn* univocally signifies an inclusion of females as well as males, the Qurʾānic phrase *inna ʿl-muslimīn waʿl-muslimāt* would entail a redundancy. The phrase would, in other words, be translatable as “the male and female Muslims and the female Muslims.” Since redundancy in the Qurʾān is an impossibility (for theological reasons that are expounded elsewhere), the argument amounts to a *reductio ad absurdum*. Furthermore, there are cases on record in which Companions of the Prophet asked for clarification concerning his use of masculine plurals. For example, when he said, “Woe to those who touch their private parts and then perform the ritual prayer without undertaking the ablutions” (a statement that employs five masculine plural pronouns in the Arabic original), his wife ʿĀʾisha asked, “This pertains to men. What about women?” Had the pronouns been clearly and univocally inclusive of females, she would not have asked this question. Added to this is a rational argument: plurals are built on singulars; if the singular masculine noun or pronoun refers univocally to a male and never to a female, the same must be true of the plural.

With the indefinite pronoun “whoever” we have an expression that is more on the order of *al-nās*, “the people.” It does not bear a sign of gender. Accordingly, the majority of jurists hold that it univocally signifies inclusion of both males and females.

The issue of the inclusion of slaves relates to all of the expressions in Āmidī’s list of “forms of general reference” that pertain to rational objects.³² Most of the partisans of general reference include slaves within the univocally signified reference of all these expressions. Accordingly, a mujtahid must have a contextual indicator, not to demonstrate that a slave is included in the reference of a given general expression, but to demonstrate that a slave is excluded. The presumption to be made is in favor of inclusion. The minority, of course, take the opposite view. Āmidī notes that some jurists distinguish between cases where a general expression is used in the context of an affirmation of a right of God and cases where it is used in the context of an affirmation of a right of human beings: in the former case the univocally signified reference is inclusive of slaves, in the second it is not. Thus, for example, any statement that establishes an obligation on the part of “Muslims” to perform the ritual prayer or prohibits “Muslims” from drinking wine will apply to slaves as well as to free men, since a right of God is thereby affirmed, but any statement that establishes an obligation on the part of “Muslims” to compensate another party for unlawful usurpation of property will not apply to

slaves unless there is a contextual indicator that makes it clear that slaves are included. The debate that ensues between the two sides on this issue focuses on the legal status of slaves (as partly property and partly persons), their subordination to their masters, and their exclusion from a variety of obligations. However, Āmidī pronounces the majority view the winner. Its central argument rests upon what is deemed to be an incontestable lexical fact: general expressions were, in the primordial moment of invention of the *Lughā*, made to refer as much to slaves as to anyone else. The exclusion of slaves is thus contrary to the *Lughā*.

We may now turn to the issues that Āmidī discusses in the section of the *Ihkām* entitled "Concerning the indication of specific reference of a general expression" (*fī takhsīs al-ʿāmm*). I shall from here on translate *takhsīs* as "the indication of specific reference" for reasons that will now become clear. (It must be understood that "general expression" throughout these pages means an *inherently* general expression, one which signifies a general reference univocally.) Āmidī begins his discussion with a preliminary section on the meaning of this important concept.³³ He notes first the definition of Abu'l-Husayn al-Basrī, which he shows to be inadequate, and then provides us with a definition—or, more strictly speaking, an explication (*bayān*)—of his own. Abu'l-Husayn defined *takhsīs al-ʿāmm* as "the exclusion of part of that which addressed speech [*khitāb*] applies to." The most serious problem (quite apart from other inadequacies I shall not go into) that Āmidī raises with respect to this definition is that it makes *takhsīs al-ʿāmm* a sort of subtraction process: it suggests that a general expression is deprived of some of its referents and ends up signifying reference only to those referents that are left over.

This way of thinking is at variance with the understanding of *takhsīs al-ʿāmm* that prevails among the partisans of general reference. While it is true that subtraction may take place in the mind of a person contemplating *takhsīs al-ʿāmm*, this subtraction has nothing to do with *takhsīs al-ʿāmm* as such. The prevailing understanding makes *takhsīs al-ʿāmm* a *diversion* of a general expression from the reference proper to it—the reference of which it is a *zāhir* signifier—to a nonliteral reference. It is not a reduction or truncation of reference but a superseding of one reference by another. Abu'l-Husayn's definition undermines the distinction between literal and nonliteral reference. The reference actually intended by a speaker must be either one or the other. A nonliteral reference cannot be part of a literal reference; it is an entirely distinct reference. The literal and the nonliteral are entirely distinct spheres of meaning. I have accordingly resisted an original temptation to render *takhsīs al-ʿāmm* as "the restriction of reference of a general expression" since this phrase can suggest a reduction of reference rather than a

diversion of an expression from one kind of reference (its proper reference) to another. "Indication of specific reference" seems to me to retain the sense of this diversion. The speaker sets aside the reference to which an expression was primordially assigned and uses it to signify another kind of reference, thus "diverting" it to this other kind of reference. He does this, of course, in keeping with the conventions governing the use of expressions in the *majāz* mode that are themselves established in the primordial moment of invention (*wadʿ*) of the Lughā.

In order to preserve the diversionary character of *takhsīs al-ʿāmm*, Āmidī defines it as "an indication that the intended reference of an expression that was originally established as a *haqīqa*-expression for general reference is [in fact] a specific reference."³⁴ This definition warrants our rendering *takhsīs al-ʿāmm* as "the indication of specific reference of a general expression." A fuller rendering might be "the indication of a restricted reference of an expression that, apart from this indication, would carry a general reference by virtue of having been primordially assigned to it."

The term "indication" suggests the presence of indicators (*adilla*). Indeed, *takhsīs al-ʿāmm* is a function of indicators, and the indicator that performs this function is called *al-mukhassis*. If one passage in the authoritative texts says, "As for the thief, male or female, cut off their hands," and another passage says, "There is to be no amputation except where an amount worth a quarter of a dinar or more has been stolen," this other passage must be taken as an indicator that the intended reference of the first passage is a specific reference, not to all thieves, but to certain thieves, namely, those who have stolen an amount whose worth exceeds a quarter of a dinar. It is essential to the functioning of an indicator of specific reference that it entail a contradiction of the general reference of the expression upon which it operates.

In the above-mentioned example (according to the partisans of general reference), one passage says, in effect, by virtue of the sense that its words carry as a result of their primordial assignment, "Cut off the hands of all thieves including those who have stolen an amount worth less than a quarter of a dinar," while the other says, in effect, "Do not cut off the hands of thieves who have stolen an amount worth less than a quarter of a dinar." If the Legislator is assumed to have intended, in employing the word "thieves," a general reference (which is the reference proper to the word as a lexical item within the Lughā), then a genuine contradiction arises between the two passages, for the Legislator in that case is saying in effect that thieves who have stolen an amount worth less than a quarter of a dinar are to have their hands cut off while, at the same time, saying in effect that such thieves are not to have their hands cut off.

One could, of course, eliminate the contradiction by treating the latter passage as an abrogation of the former passage. But Muslim jurisprudential thinking, as we shall see, disallows the elimination of contradiction through a supposition of abrogation when the contradiction can be eliminated in some other way. In the present case we have another way: we may suppose that the Legislator, in informing us that thieves who have stolen an amount worth less than a quarter of a dinar are not to have their hands cut off, is indicating to us that in saying that thieves are to have their hands cut off he is using the word "thieves" in the *majāz* mode to signify a nonliteral reference just to thieves who have stolen an amount worth a quarter of a dinar or more. Nonetheless, the relationship between abrogation and indication of specific reference of general expressions was the subject of much discussion among the Muslim jurists, and we shall return to it shortly.

Clearly, then, if we have a passage that says, "Cut off the hands of thieves," and another that says, "Cut off the hands of thieves who have stolen an amount worth a quarter of a dinar or more," we do not have an indication of the specific reference of the word "thieves" in the first passage; for even though "thieves" in the second passage has a specific reference, by virtue of the attribute "who have stolen an amount worth a quarter of a dinar or more," there is nothing in this second passage that may be said to contradict the general reference of "thieves" in the first passage. The Legislator, in telling us that thieves who have stolen an amount worth a quarter of a dinar or more are to have their hands cut off, is not necessarily telling us that thieves who have stolen a lesser amount are *not* to have their hands cut off. If he wishes to tell us the latter, he will get the point across to us in one way or another. Clearly, "Do not cut off the hands of thieves who have stolen an amount worth less than a quarter of a dinar" gets a point across that "Cut off the hands of thieves who have stolen an amount worth a quarter of a dinar or more" does not. Against those who might contend that the latter statement implies what the former statement says more explicitly Āmidī has arguments we shall consider in another chapter.³⁵

Of the issues pertaining to the indication of restricted reference, two are of a general nature and the rest are divided between issues having to do with attached indicators of restricted reference and issues having to do with detached indicators. (The distinction between attached and detached indicators was introduced earlier in this chapter.) Since issues having to do with detached indicators are more interesting from a methodological point of view, I shall confine the reader's attention to them in what follows. From Āmidī's discussion of these issues,³⁶ we learn that the following positions were maintained by the majority, or in some cases by all, of the partisans of

general reference, who, as we have noted, represented the majority of Muslim jurists.

1. A rational indicator (*al-dalīl al-ʿaqlī*) may serve to indicate specific reference of a general expression found in any authoritative texts (a majority view). While one can never determine through the exercise of reason the divine categorizations of human acts, one can sometimes determine through the exercise of reason that the Divine Legislator, in employing a general expression, intends a specific reference. Thus the word “mankind” in “And pilgrimage to the House is a duty unto God for mankind” (Qurʾān 3:97) must carry a specific reference, since children and the mentally incapacitated, who are among the proper referents of “mankind,” cannot be referents in this case. It may be recalled here that the principle that human beings cannot be charged with duties of which they are not capable was affirmed by many Muslim theologians on the basis of rational argumentation.
2. A Qurʾānic text may indicate specific reference of a general expression found in some other Qurʾānic text (a majority view).
3. A Sunnaic text may indicate specific reference of a general expression found in some other Sunnaic text (a majority view). It should be kept in mind that the concern reflected in this and the above position is with two texts that are not linked together such that the indicator of specific reference must be regarded as attached. A detached indicator may be quite remote, within either Qurʾānic or Sunnaic texts, from the general expression upon which it operates. “Sunnaic text” should be understood here to refer to sayings of the Prophet, not to his acts, which are the concern of the ninth position (see below).
4. A Qurʾānic text may indicate specific reference of a general expression found in a Sunnaic text (a majority view).
5. A *mutawātir* Sunnaic text may indicate specific reference of a general expression found in a Qurʾānic text (a unanimously held view). (For a discussion of the term *mutawātir*, see Part II, chapter 6.³⁷) Āmidī records no arguments for this position; the complete absence of any dialectic connected with it is a sign, no doubt, that Muslim jurists were unable to agree on specific examples of *mutawātir* Sunnaic texts. The concept of a *mutawātir* Sunnaic text had theoretical validity but no practical importance. (The concept of *al-mutawātir biʾl-maʿnā*—also touched on in the earlier discussion—is perhaps an exception.)
6. A non-*mutawātir* Sunnaic text may indicate specific reference of a general expression found in a Qurʾānic text (the view of a bare majority,

it seems, judging from its being held by the founders of all four of the eventually surviving Sunnī schools of legal thought).

7. An Ijmā'ic text (a text expressing or embodying an Ijmā'ic consensus) may indicate specific reference of a general expression found in either a Qur'ānic or Sunnaic text (a unanimously held view). One gathers that this presupposes the view that only a consensus that has emerged out of deliberation over authoritative indicators is itself authoritative (see Part II, chapter 5.³⁸)
8. The construed implication (*mafḥūm*) of an authoritative text may indicate specific reference of a general expression found in some other authoritative text (unanimously held by those who accepted the notion of construed implication, a subject to be discussed in a later chapter).
9. An act of the Prophet that can be shown to be exemplary for the Muslim community—not all of his acts were—may indicate specific reference of a general expression found in any authoritative text (a majority view).
10. An act of a person other than the Prophet that had the Prophet's tacit approval (in that the Prophet, knowing of the act, remained silent about it) may indicate specific reference of a general expression found in any authoritative text (a majority view).

It may strike the reader as strange that the fifth of the above positions should enjoy unanimous acceptance while the second, third, and fourth do not. Why would some jurists (however few) allow the Sunna to operate upon the Qur'ān as an indicator of specific reference but not allow the Qur'ān to operate upon itself, the Sunna to operate upon itself, or the Qur'ān to operate upon the Sunna? The operation of the Sunna upon the Qur'ān required, of course, that the Sunna passage involved be *mutawātir*, a requirement that makes such an operation highly academic; however, we have before us here an issue of considerable theoretical interest. Clearly, those few jurists who allowed only the operation of the Sunna upon the Qur'ān were attempting to preserve a principle that had probably had fairly widespread support in the earlier period of the development of Muslim thought—that the Sunna elucidates the Qur'ān (it being understood that indication of specific reference is a type of elucidation). This principle seemed to have a solid basis in Qur'ān 16:44: "...that you may make clear to mankind what was sent down to them." Does not this verse clearly make the Prophet an elucidator of the Qur'ān? And is not his being elucidator tantamount to the Sunna's being elucidator? And if the Sunna is the elucidator of the Qur'ān, how can the elucidated (i.e., the Qur'ān) become the elucidator? Furthermore, is not that

which is elucidated principal (*asl*) in relation to that which elucidates? How can the Sunna be principal in relation to the Qur'ān?

There is, of course, another Qur'ānic verse that clearly makes the Qur'ān an elucidator: "And We sent the Scripture down to you as an explanation [*tibyānan*] of all things" (16:89). Does not "all things" include the Sunna? So it might to some interpreters, but to others it could very well have a specific reference to things other than the Sunna: the Qur'ān elucidates all things other than the Sunna; the Sunna in turn elucidates the Qur'ān. The indicator of restricted reference in this case is rational in nature: if the Sunna elucidates the Qur'ān, then to say that the Qur'ān elucidates the Sunna is to fall into circularity.

In response to this way of thinking, Āmidī goes to especially great lengths to clarify the relationship between the Qur'ān and the Sunna: the two are clearly coequal as repositories of revelation.³⁹ The Qur'ān is principal in relation to the Sunna only by virtue of its role as attester to the authority of the Sunna, its own authority being attested by its miraculous character. This principality of the Qur'ān in no way makes it more truly a revelation than the Sunna. Both the Qur'ān and the Sunna are "sent down" (*munazzal*) from on high. Those who use 16:44 to disprove that the Qur'ān may elucidate the Sunna, or that the Qur'ān may elucidate itself or the Sunna itself, wrongly take "what was sent down" (*mā nuzzila*) to be an exclusive reference to the Qur'ān. In fact, this phrase embraces both the Qur'ān and the Sunna. This being the case, any part of the divine revelation, be it a Qur'ānic text or a Sunnaic text, may elucidate any other part. In stating that the Prophet "make[s] clear to mankind what was sent down," the Qur'ān is saying in effect that revelation explains revelation. The Prophet's explanation is not his own: he explains only in the sense that the explanation is, like all revelation, heard upon his lips, the real explainer being God.

In making his case for the second of the above-listed positions,⁴⁰ Āmidī presents an argument that, he later tells us, is also applicable to the third, fourth, and fifth positions. It thus becomes, in the end, an argument for accepting the notion of indication of specific reference of general expressions as a phenomenon that extends to the entire corpus of authoritative texts and may involve the operation of any text within that larger corpus upon any other text, Qur'ānic upon Qur'ānic, Sunnaic upon Sunnaic, Qur'ānic upon Sunnaic, or Sunnaic upon Qur'ānic.

The argument runs as follows. If we encounter two texts in the textual corpus, one of which (text A) contains a general expression and the other (text B) an expression that refers to only some of the referents of the general expression, the other referents being clearly excluded, we are compelled to

do one of two things. Either we take the general expression contained in text *A* at face value and treat it as having a general reference without regard for the consequences this may have for text *B* or we let our deliberations be governed by the specific reference of text *B*. If we do the former, we in effect nullify text *B* altogether; if we do the latter, we do not nullify text *A* altogether since it is still possible to accord it validity by attributing a specific reference to the general expression contained therein. The latter course is the preferable one, since specific reference is always more likely to be intended than is general reference, the reason being that general reference is subject to the possibility of having been set aside in favor of specific reference while specific reference is not subject to this possibility.

Not all Muslim jurists were convinced that our taking the specific reference of text *B* as determinative allowed us to accord validity to text *A*. Some, it appears, regarded text *B* as having the effect of abrogating text *A*. Āmidī is therefore constrained to explain why he refuses to assign an abrogating role to text *B* and why he insists on dissociating indication of specific reference from abrogation. Abrogation, he argues, is a much more serious matter: it is a cancellation of something previously established. If we were to say that text *B* abrogates text *A*, we would be saying, in effect, that the Legislator really did intend that text *A* should have a general reference and that text *B* cancels this original intention. If we treat text *B* as an indicator of specific reference, we are saying, in effect, that text *B* shows us that the Legislator intended that text *A* should have a specific reference; there has been, in that case, no cancellation of an original intention.

Furthermore, the process of demonstrating that text *B* abrogates text *A* requires that we establish the chronological order of the two texts, with *B* succeeding *A*. That makes this process more arduous than the process of demonstrating that text *B* is an indicator of specific reference of text *A*, since the latter requires no placement of texts in chronological order. Since we should, when faced with two interpretative processes, prefer the one that is the less arduous and that does not have the effect of canceling passages, we must prefer indication of specific reference over abrogation as the function performed by text *B* respective to text *A*.

Āmidī's account of the dialectic over reference-related issues focuses, as I have said, upon issues having to do with the general expression. He leaves to his reader the task of applying his discussion to the issues that have to do with the unqualified (*mutlaq*) expression.⁴¹ We the readers must therefore decide what is applicable and what is not. I shall not undertake this task here but shall, like Āmidī, let my reader undertake it on his or her own. A few points may, however, be worth mentioning. The first is that the crucial issue of

whether the Lughā contains forms that signify general reference as their sole literal sense (that is to say, by virtue of having been assigned exclusively to general reference in the primordial moment when the Lughā was invented) is quite obviously applicable to the unqualified expression: does the Lughā contain a form that signifies unqualified reference as its sole literal sense? I have made reference to this earlier in this chapter.

We are to assume, apparently, that Muslim jurists were divided into camps much like those involved in the debate over whether the Lughā contains forms that signify general reference as their sole literal sense: some maintained that the form consisting of the indefinite singular noun (for example, “an apple” in “Bring me an apple”) signifies unqualified reference as its sole literal sense, which is to say that it signifies this reference univocally in the manner of a *zāhir* signifier and that it can signify qualified reference only with the help of a contextual indicator, in which case the unqualified reference proper to the form gives way to a nonliteral qualified reference. (This would be the case, for example, if someone knew that I, like most people, disliked overripe or extremely bitter apples and was able to declare that “an apple” carried a qualified reference to a ripe and sweet apple.) Others, we may assume, maintained that this form signifies qualified reference as its sole literal sense, while still others maintained that it is inherently homonymous (that is to say, it signifies both unqualified and qualified reference as distinct literal senses). Finally, we may assume that some jurists (including Āmidī) opted for a noncommittal position on this issue. The arguments presented by these various parties to the debate were, we are to gather, much like the arguments Āmidī records in his account of the debate over the “forms of general reference.”

The second point to be observed is that the greater number of issues pertaining to the unqualified expression may be presumed to be intramural ones debated among “partisans of unqualified reference.” Among these, many of the issues will pertain to the “indication of qualified reference of an unqualified expression” (*taqyīd al-mutlaq*). Discussion of these will involve considerations of the relationship between the Qur’ān and the Sunna and of the relationship between *taqyīd al-mutlaq* and abrogation similar to those mentioned in the foregoing pages.

AMBIGUITY, LUCIDITY, AND DIVERSION TO NONAPPARENT MEANING

In this chapter we shall take up the last of the topics that are placed under the heading of “the indicatory functioning of the ordered language of the texts” (*dalālat al-manzūm*) in the *Ihkām*. These topics are expressed in Arabic as (1) *al-mujmal*, (2) *al-bayān wa'l-mubayyan*, and (3) *al-zāhir wa-ta'wīluhu*. These phrases I shall render as: (1) the ambiguous expression, (2) the elucidator and the elucidated, and (3) the *zāhir* (univocal) expression and its diversion to a nonliteral meaning (to be called in this chapter nonapparent meaning, for reasons which will later become clear).

These topics are by no means new at this point in our study. We have encountered them innumerable times in our consideration of the Muslim dialectic over the *if'al* form (chapter 7) and over reference-related issues (chapter 8). For example, some Muslim jurists, in treating the *if'al* form as a homonym, were in effect placing it in the category of the ambiguous expression, for homonymity is one of the types of ambiguity. In insisting that one can know which of its meanings (obligation, recommendation) is the one intended by the speaker only from a contextual indicator, these jurists were in effect insisting upon the need for an elucidator, for a contextual indicator is, as we shall see, a type of elucidator. Other jurists, we learned, regarded the *if'al* form as signifying obligation as its sole literal sense and as signifying recommendation as a nonliteral sense. In insisting that in order to overrule a presumption in favor of the sole literal sense as intended by the speaker one must locate within the context an indicator that shows a nonliteral sense to be intended, these jurists were bringing into consideration a device known in Arabic as *ta'wīl*, “diversion to nonliteral (i.e., nonapparent) meaning.”

Thus, in turning to the topics under consideration, Āmidī is not taking us into uncharted territory but is rather dealing with topics already familiar to us, but at a more general and comprehensive level. He is, in other words, now for the first time dealing with ambiguity, lucidity, and the diversion of

zāhir-expressions to nonliteral meaning as topics worthy of exploration in their own right.

Ambiguity

Ambiguity is the supreme problem for the one searching for the divine law within the meaning that the authoritative texts carry by virtue of their primordial assignment (*wadʿ*). To dispel ambiguity is to set foot upon the path of lucidity. When ambiguity is present, God's law eludes the mujtahid, who is unable to make a presumption regarding intended meaning. When ambiguity is dispelled, God's law has begun to become manifest to him.

But what does it mean for an expression to be ambiguous? On this question the Muslim jurists, quite predictably, differ.¹ Some define the ambiguous expression as an expression from which nothing is understood when it is uttered. The problem with this definition, according to Āmidī, is that it is neither sufficiently exclusive nor sufficiently inclusive: it does not exclude nonsense expressions (e.g., “bazigmee,” which is hardly ambiguous), and it does not include the ambiguous expression from which *something* is understood, namely, that the speaker has in mind one of a number of possible senses, even though this “something” is indefinite; and it does not include expressions that are ambiguous in certain respects and clear in others.

Others try to improve upon the above definition by defining the ambiguous expression as an expression from which nothing is understood when it is uttered in a sense of “nothing is understood” that is appropriate to the ambiguous expression. Āmidī quickly dismisses this attempt at improvement as a violation of a cardinal rule of definition: the definiendum must not be contained within the definiens, for this renders the definition circular.

Others try another improvement: the ambiguous expression is an expression from which the *intended* meaning (*al-murād*) cannot be known. But this is still subject to the charge of not being sufficiently exclusive: it does not exclude nonsense expressions, and it does not exclude expressions that have a single literal meaning but whose intended meaning could be nonliteral. The second point touches on a theme which we have encountered previously in this study: any univocal expression is, despite its univocality, subject to the possibility that its intended meaning is a meaning other than the literal one. There is thus a kind of uncertainty surrounding even the otherwise lucid expression. Āmidī and the majority of Muslim jurists were clearly unwilling to place this uncertainty within the category of ambiguity. Ambiguity thus exists exclusively at the level of literal meaning.

Āmidī mentions two other definitions of the ambiguous expression that he seems to regard as satisfactory from one point of view and unsatisfactory from another. The first defines the ambiguous expression as an expression that can be correctly used in either of two different senses but whose precise (intended) sense in any given instance cannot be determined on the basis of either lexical definition (*bi-wadʿ al-lughā*) or common usage. The second defines it as an expression that conveys (as its intended meaning) one of a number of meanings that is determinate in itself, but which the expression itself does not specify. What Āmidī finds unsatisfactory in these definitions applies to all definitions of the ambiguous expression: they are limited to the realm of verbal utterances and exclude an important category of indicators of the divine law—the acts of the Prophet. Acts, no less than verbal utterances, can be ambiguous as indicators, says Āmidī.

In order to include acts of the Prophet in his definition, Āmidī makes his definiendum, not the ambiguous expression, but simply the ambiguous (*al-mujmal*), that is to say, the ambiguous indicator in the broadest sense inclusive of both verbal indicators and nonverbal behavioral indicators. This he defines as “that [i.e., an expression or act] which signifies [as the intended matter] one of two things,³ neither of which has any preponderance over the other in relation to it [i.e., the expression or act].”³ The phrase “that which signifies” includes both verbal utterances and acts. The phrases “one of two things” and “neither of which has any preponderance over the other in relation to it” are both exclusive: the first excludes that which signifies a single identifiable thing, not an unidentifiable “one of two things”; and the latter excludes expressions that have two meanings, one literal and the other nonliteral. Vacillation between a literal and nonliteral meaning is thus not included under the heading of ambiguity.

Since the enterprise of formulating the divine law by and large draws upon the verbal statements of God or the Prophet to a greater extent than it draws upon acts of the Prophet (owing largely to the highly problematic character of the latter, noted in an earlier chapter), I shall in these pages associate ambiguity with verbal statements and shall speak accordingly of the ambiguous expression.

The notion of an expression that “signifies one of two things neither of which has preponderance over the other” brings to mind the homonym, which is in fact a major instance of the ambiguous expression. However, an important distinction must be drawn between ambiguity and homonymy. Ambiguity relates to the signification of *intended* meaning, whereas homonymy relates to the signification of meaning as a function that an expression has by virtue of its primordial assignment (*wadʿ*), quite apart from

the speaker's intention. A homonym will generally be an ambiguous expression. It is a homonym simply by virtue of signifying (quite apart from the speaker's intention) a plurality of coequal literal meanings, whereas it is an ambiguous expression by virtue of signifying an intended meaning that happens to be one of several literal meanings of the expression, none of which has any intrinsic preponderance over the other.

Āmidī's definition suggests that ambiguity is eliminated by establishing the preponderance of one meaning over all other possible meanings. The phrase "neither of which has any preponderance over the other in relation to it" can be recast as "neither of which is more likely to be the intended meaning of the expression than the other." Whenever it can be established on the basis of contextual indicators that one meaning is more likely to be the intended meaning than others, the ambiguity may be considered to have been eliminated. It is not necessary, in other words, to establish with absolute certainty that one meaning is the intended meaning. The mujtahid works with probability whenever certainty is beyond his reach, and this holds true most of the time.

Āmidī lists the following as instances of the ambiguous expression:⁴

1. The simple (i.e., noncomposite) homonym. A homonym, let us remember, is an expression that has more than one literal meaning. One can differentiate the simple homonym whose meanings are simply distinct from each other (e.g., *'ayn*, which means both "eye" and "source") from the simple homonym whose meanings are contraries (e.g., *qur'*, which means both "purity" and "impurity").
2. The composite homonym; for example, the phrase "he... in whose hand is the marriage tie" in Qur'ān 2:237, which vacillates between the sense of "husband" and that of "legal guardian."
3. The pronoun that is ambiguous in respect to its antecedent, for example, the pronoun *huwa* in *kullumā 'alimahu 'l-faqīhu fa-huwa kamā 'alimahu*, which vacillates between two possible antecedents, *al-faqīh* and the *mā* in *kullumā 'alimahu*.
4. The expression that vacillates between an assembly of parts and an assembly of attributes as literal meanings; for example, the statement "Five is an even number and an odd number" (*al-khamisa zawj wa-fard*), which can mean either that the number five is *made up* of an even number (four) and an odd number (one) or that it is both even and odd (that is, characterized by both evenness and oddness). The first is, of course, a true mathematical statement, whereas the second meaning happens to be false, as Āmidī points out.
5. The ambiguous "and" (*wāw*), which may either function as a pure conjunction or indicate a new point of departure. For example, the "and"

in Qur'an 3:7 allows two different interpretations: "None knows its explanation save only God. And those firmly rooted in knowledge say: We believe in it"; or "None knows its explanation save only God and those firmly rooted in knowledge. [They] say: We believe in it."

6. The ambiguous attribute; for example, "clever" in "Zayd is a clever doctor," which may mean either that he is clever as a doctor or that he is a doctor who happens to be clever about things in general.
7. The expression that is ambiguous as to its nonliteral meanings. Although the vacillation of an expression between its literal sense and a nonliteral sense does not constitute ambiguity, as we have seen, that between several possible nonliteral senses does constitute ambiguity. This kind of ambiguity arises only when it becomes impossible, by virtue of the context, to take an expression in its literal sense.
8. The expression that is ambiguous with respect to its reference as the result of an imprecise indication of specific reference (*takhsīs*). It may be recalled from the preceding chapter that an expression can signify a reference to some as opposed to all members of a given class without there being a precise indication in the texts as to which members are intended as referents.⁵ This creates ambiguity in that the expression as it stands in the text could signify reference to any one of a number of different collectivities within the larger class, none of which have preponderance over the others. This ambiguity may be due to an exclusion of unspecified cases—as, for example, if someone says, "Kill the idolaters," and then later says, "I do not mean that all idolaters are to be killed." Or it may be due to exclusion by means of an attribute that is not understood, as in "Lawful for you are all beyond those mentioned, so that you seek them with your wealth as *muhsinīn*" (Qur'an 4:24), where *muhsinīn* is not understood. Or it may be due to the use of an exceptive phrase that does not specify exactly what is excepted, as in "The beast of the flocks is made lawful for you [for food] except what is announced unto you [herein]" (Qur'an 5:1).
9. The expression that is ambiguous in the sense of vacillating between a basic literal meaning and a technical Shari'a-related meaning. An example is the expression "fast" (*sawm*), which signifies as its basic literal meaning simple fasting and as its technical Shari'a-related meaning a certain prescribed fast that must be performed in a certain way and at a certain time. Āmidī later notes that the majority of jurists, including himself, reject this category of ambiguity.⁶

The issues relating to ambiguity that we find in the *Ihkām* are surprisingly few—eight altogether. One would suppose that a matter of such importance

for the enterprise of formulating the divine law would engender a much wider spectrum of problems. On the other hand, we must remember that some of the most intractable problems relating to ambiguity have to do with the interpretation of the *ifʿal* form and of general expressions, and these have already been dealt with. For the most part ambiguity is more a practical problem than a problem of theory or methodology. The mujtahid may be assumed to encounter ambiguity in the authoritative texts more or less regularly. When he does, he must resolve the ambiguity on the basis of contextual indicators. This is often no easy task, although the methodological requirements are fairly straightforward. So long as the ambiguity is not resolved by establishing a preponderance of one meaning over the others, the mujtahid must refrain from proposing a formulation of the divine law.

Of the eight issues, the first relates to passages in the authoritative texts in which a thing as opposed to an act is characterized as permitted (*halāl*) or forbidden (*harām*).⁷ Examples are Qurʾān 4:23 (“Forbidden to you are your mothers, and your daughters, etc.”) and 5:3 (“Forbidden to you are carrion and blood and swine-flesh, etc.”). “Permitted” (as opposed to “neutral”) is a category that embraces whatever is not forbidden.

The issue that the Muslim jurists debate is whether a statement such as “Forbidden to you is swine-flesh” should be considered ambiguous on the grounds that it is elliptical and that the suppressed element—an act of some sort—could be any one of a number of possibilities. In other words, do we have in this type of statement another instance of the ambiguous expressions that should be added to the list given above? The issue presupposes that things can never in and of themselves be permitted or forbidden but only acts. When a thing such as swine-flesh is said to be forbidden, it is really an act such as the eating of swine-flesh that is forbidden. As we learned in an earlier chapter, only acts are subject to the divine categorizations (*ahkām*), never things in and of themselves. But how can we say on the basis of “Forbidden to you is swine-flesh” that it is specifically the eating of swine-flesh that is forbidden? Could it not rather be the buying and selling of swine-flesh, or the production of swine-flesh (through the raising of swine), or the handling of swine-flesh (to mention only a few possibilities) that is forbidden? Until we discover a contextual indicator that makes the intended sense clear, should we not treat elliptical statements such as this as having several possible senses, none of which has any preponderance over the others?

The ramifications of this issue for the process of formulating the divine law are great. If we treat “Forbidden to you is swine-flesh” as truly ambiguous, then we disallow any formulation of the divine law on the basis of these words alone. No formulation of the divine law is possible unless a presumption can

be made in favor of a particular meaning. These words do not give rise to such a presumption, allowing the mujtahid, in the *absence* of an indicator that overturns it, to proceed to formulate the divine law; they give rise, rather, to a stalemate that compels the mujtahid to discover a contextual indicator that will establish the preponderance necessary in order for a presumption to be made.

Āmidī adopts the position of the opposition: elliptical statements on the order of “Forbidden to you is swine-flesh” are not ambiguous. Whoever is familiar with proper usage and is adept in the linguistic habits of the Arabs will find that upon hearing anyone say, “I forbid unto you this particular food,” or “I forbid unto you women,” nothing will occur to his mind except that eating the food in question or sex with women has been forbidden. Āmidī reiterates the principle that whatever occurs immediately to the mind of a speaker versed in the *Lughā* upon hearing a particular expression may be assumed to be the proper and literal sense of that expression. Thus “Forbidden to you is swine-flesh” has as its literal sense the forbiddenness of eating swine-flesh and nothing else, any other sense being therefore nonliteral. Since ambiguity is defined in terms of a plurality of literal senses, “Forbidden to you is swine-flesh” is not ambiguous. The mujtahid may therefore, in the absence of any contextual indicator to the contrary, make a presumption in favor of the forbiddenness of eating swine-flesh and may proceed to formulate the divine law on the basis of that presumption.

The second through the fifth issues pertain to particular passages in the authoritative texts. We shall here examine one of these—the fifth—as illustrative of the others⁸. It pertains to a passage of special interest to us, referred to elsewhere in this book: “As for the thief, both male and female, cut off their hands” (Qur’ān 5:38). Some jurists considered the expressions *qatʿ* (here translated as “cut off”) and *yad* (here translated as “hand”) to be ambiguous. *Qatʿ*, they said, carries two literal meanings: it means both “to cut off” (in the sense of severing) and “to cut into” (in the sense of lacerating). *Yad*, on the other hand, carries three literal meanings: “arm-and-hand,” “fore-arm-and-hand,” and “hand.” With both expressions, these multiple meanings are equal in weight: none has any preponderance over the others.

Other jurists disagreed. Their objection, as presented by Āmidī, consisted of a general argument and arguments pertaining to each of the two expressions. The general argument was that the two expressions are both subject to three possibilities: they could indeed be homonyms (and thus ambiguous), but one must also take into account the possibility that only one of their meanings is literal while the others are nonliteral or that one of their meanings is their true literal meaning while the others are what may perhaps

best be called “off-literal” meanings (resulting in the expressions being in the category of *mutawāṭiʿ* expressions). If either of the latter two possibilities obtains, then the expressions are not ambiguous in the technical sense. Since there is no reason to prefer the first of these three possibilities over the others, the adversaries in this debate do not have a solid case. This general argument suggests that one should be noncommittal on this issue, although Āmidī does not actually say this.

The arguments pertaining to each of the two expressions separately are more decisive. *Yad*, though it can be used in any of the three senses indicated above, clearly has “arm-and-hand” as its sole literal meaning such that the other meanings must be regarded as nonliteral. The proof of this is that, if the hand or the forearm-and-hand is cut off, it is in keeping with proper usage to say, “Part of the *yad* has been cut off, not all of it.” As for *qatʿ*, it has “to cut the whole of something off from what it is attached to” as its literal meaning. Accordingly, the phrase *qatʿ al-yad* has “to cut off the whole *yad*” as its proper sense. When one uses this phrase to signify cutting off one part of the *yad* from the rest, however, one is using it in a nonliteral sense.

To those who object that this way of thinking removes the obligation to limit cutting off the *yad* to cutting off the hand—since to cut off only the hand is to contradict the literal meaning—the reply is as follows. It is allowable to contradict the literal meaning on the ground that a nonliteral meaning is intended, although one must, of course, have a contextual indicator to support one’s preference for the nonliteral meaning. As a matter of fact, this procedure, inasmuch as it does not presuppose ambiguity (which requires, as we have noted, a plurality of literal meanings), should be given precedence over the procedure that does presuppose ambiguity, for ambiguity requires that a contextual indicator be found that eliminates the ambiguity before any sort of presumption can be made that will allow the mujtahid to formulate the divine law.

In other words, when one is faced with two different procedures, one of which facilitates the formulation of the law to a greater extent than the other, one should prefer the former over the latter. If one takes the approach of regarding *yad* as having “arm-and-hand” as its literal meaning and “hand” as a nonliteral meaning, one facilitates the formulation of the law to a greater extent than would be the case if one regarded *yad* as having both “arm-and-hand” and “hand” as literal meanings; for in this approach the mujtahid is not stymied from the outset. If he finds no contextual indicator to support a nonliteral meaning (“hand”), he may *in the absence of* such an indicator proceed to formulate the law on the basis of the literal meaning (“arm-and-hand”). If he finds such an indicator, then he will, of course, formulate the law on the basis

of the nonliteral meaning ("hand"). This is very different from the situation in which the mujtahid must begin with two literal meanings, for in this case he is context-dependent to a much greater extent: he cannot allow the context to play a merely negative role (that is to say, he cannot proceed in the absence of a positive contextual indicator but must first locate such an indicator).

Āmidī does not clearly associate himself with either side of this debate. I have generally assumed, in my reading of the *Ihkām*, that when he presents the arguments for one side but not the other, providing replies to objections raised against particular points in these arguments—all of which he does in the present case—he is himself embracing that side. However, it seems to me that the argument he presents in this case is not entirely consistent with his general methodological posture, as expressed throughout the *Ihkām*. To be more specific: the point about the preference for whichever of several alternative approaches to the handling of the expressions *yad* and *qat'* most facilitates the formulation of the divine law seems inconsistent with Āmidī's general thinking. If facilitation of the work of the mujtahid was a criterion for choosing between alternative approaches to the interpretation of texts, then it seems to me he would have taken a different position on certain very crucial issues from the one he actually does take. A case in point is the issue over the import of the *if'āl* form. If facilitation of the work of the mujtahid was in itself a decisive basis for argumentation, he would surely have joined the company of those jurists who regarded the *if'āl* form as signifying imposition of obligation (or recommendation) as its sole literal sense, all other senses being nonliteral.⁹

It is certainly of interest to observe, before passing on to other issues, that no party of jurists, apparently, argued for cutting off the hand only—which is the usual practice when the penalty for theft is applied—on strictly literalist grounds. The literalist interpretation of Qur'an 5:38 offers a much grimmer prospect for the offender than the prevailing nonliteralist approach. Elsewhere in the *Ihkām* Āmidī indicates a way in which this literalism could be overcome: by reference to the Prophet's example.¹⁰ The Prophet's act of cutting off the hand only serves as an indicator that a nonliteral sense of *yad* is intended.

The sixth issue is somewhat related to the fifth.¹¹ Against the view that *yad* and *qat'* are homonyms it was argued that one must take into account the possibility that they have one literal meaning and that the other meanings are nonliteral. The sixth issue is whether the presence of two such possibilities (homonymity vs. univocality) constitutes a higher order of ambiguity. Homonymity is, of course, a type of ambiguity. But when an expression is subject to the possibility of its being a homonym while being

at the same time subject to the possibility of being univocal (these possibilities arising, presumably, out of different sets of lexicographical data) do we have another type of ambiguity? The majority of jurists, according to Āmidī, say no. Ambiguity would arise only if the two possibilities were equal in weight, neither having preponderance over the other. But this is not the case. Homonymity, runs the argument, has preponderance over univocality. This statement seems to function as a principle to which appeal can be made. However, it is clearly inconsistent with the line of reasoning we encounter in the argument of those who regarded *yad* and *qat'* as univocal (fifth issue). Just where Āmidī stands amid these different ways of thinking is difficult to discern.

Finally, the seventh and eighth issues are concerned with expressions such as *al-salāh* and *al-sawm* that have a specialized Shari'a-related meaning¹³ while at the same time having ordinary literal meanings as lexical items within the *Lughah*.¹³ May such expressions, by virtue of admitting both kinds of meaning, be regarded as ambiguous? The position of the majority of jurists, which is that of Āmidī as well, is that they are not, since in the authoritative texts the Shari'a-related meanings have preponderance over the ordinary literal meanings. This is because the primary objective of the Legislator, or Shari'a-giver, is the communication of those categorizations of human acts that constitute the Shari'a, the *ahkām shar'iya*, and Shari'a-related meanings play a more important role in the realization of this objective than do ordinary literal meanings. The eighth issue narrows down the discussion somewhat: does it make a difference whether the expression under consideration is used in the context of an affirmation (i.e., rendering an act obligatory, recommended, or neutral) or in the context of a negation (i.e., rendering an act disapproved or forbidden by means of a negative command or *nahy*)? While some jurists (Āmidī mentions Ghazālī) maintained that an expression that admits of both a Shari'a-related and an ordinary literal sense is ambiguous in the context of a negation but that the Shari'a-related meaning prevails in the context of an affirmation, Āmidī opts for the view that the expression is ambiguous in neither case. In the context of an affirmation the Shari'a-related meaning does indeed prevail, he thinks, but in the context of the negation the literal meaning has definite preponderance. He illustrates his point with the expression *al-bay'*, "contract of sale." When the Legislator renders the sale of a slave neutral (i.e., lawful), which constitutes a kind of affirmation, it is the Shari'a-related meaning of *al-bay'* (a sale effected through certain carefully defined procedures) that has preponderance; but when he renders the sale of a freeman forbidden, it is the ordinary literal meaning (which is broader) that has preponderance.

Lucidity

The subject of ambiguity leads naturally to the subject of lucidity. I have said that to dispel ambiguity is to set foot upon the path of lucidity. Lucidity is the opposite of ambiguity. But it is much more than that: it is the opposite of all forms of obscurity. As we enter the section of the *Ihkām* on lucidity, we soon find that ambiguity, in the technical sense of that term that we considered above, is but one form of obscurity (*ishkāl*).¹⁴ Obscurity, in the general sense, exists whenever the intended meaning behind an expression does not come through to the one addressed as at least the probable intended meaning. Thus, for example, when the Legislator uses a *majāz*-expression, a kind of obscurity exists until such time as the mujtahid discovers in the context an indicator that establishes the nonliteral as opposed to the literal meaning as at least probable.

The key Arabic terms in the discussion of lucidity are *bayān* and *mubayyan*, and before turning to issues relating to lucidity Āmidī must first define these terms.¹⁵ *Bayān*, he notes, is defined by Muslim jurists in three very different ways. Some—Abū Bakr al-Sayrafi and other Shāfi'is—define it as a making known of something not previously known, and they explain that they mean by this a transferring of something from the sphere of obscurity (*ishkāl*) to the sphere of clarity (*wudūh*) and perspicuity (*tajallī*). *Bayān*, in this definition, becomes synonymous with *tabyīn*. At least one jurist, Abū 'Abd Allāh al-Basrī, defines *bayān* as the knowledge that occurs by means of an indicator (*dalīl*). Finally, a third opinion makes *bayān* synonymous with *dalīl* so that the definition of the former is also the definition of the latter. This, says Āmidī, is the view of Ghazālī, Bāqillānī, and most other Ash'arīs, as well as of most Mu'tazilis, including Jubbā'ī, Abū Hāshim, and Abū'l-Husayn al-Basrī.

The third view, according to Āmidī, is correct. It is supported by an appeal to lexicography and to common usage (*'urf*). According to both, if someone presents a *dalīl* to someone else with the fullest possible degree of clarity, it is proper to say of him, "He completed his *bayān*, and it is an apposite *bayān*," even if the objective of producing knowledge in the mind of the hearer is not realized and a making known of something in the sense of transferring it from the sphere of obscurity to the sphere of clarity does not occur.

By equating *bayān* with *dalīl*, Āmidī and like-minded jurists give a very broad sense to *bayān*. A *dalīl*, let us remember, is for Āmidī a means whereby one attains knowledge or a reasoned opinion. In the science of jurisprudence, the knowledge or opinion one seeks has, of course, the law as its object, and one of the important types of *dalīl* is the *dalīl lafzī* (textual indicator). This type of *dalīl* is clearly uppermost in Āmidī's thinking when he

equates *bayān* with *dalīl*, although strictly speaking he includes other types of *dalīl* as well (for example, the rational *dalīl*).

In rejecting the definition of *bayān* in terms of the transference of something from the sphere of obscurity to the sphere of clarity, Āmidī is not saying that a *bayān* may not in fact have this function. He merely wishes to emphasize that it is not limited to this function: it also has the function of bringing something to light in a situation in which there has been no prior obscurity. Obscurity occurs when a speaker uses a phrase that does not get across his intended meaning; in this case a *bayān* may very well serve to get that meaning across. But an expression may get a meaning across *ab initio*, in which case it deserves to be called *bayān*. Accordingly, Āmidī rejects Sayrafī's definition of *bayān*. As for the definition of *bayān* as the knowledge that occurs by means of an indicator (*dalīl*), it is in reality circular, for the occurrence of knowledge by means of an indicator is commonly called *tabayyun* (a cognate of *bayān*) in Arabic. Thus the definition in effect has included the definiendum within the definiens.

In spite of Āmidī's not wishing to limit *bayān* to the function of making the obscure clear, it is clearly this function that is at the center of attention in the dialectic over the various issues related to *bayān*. For this reason, I shall in the following pages translate *bayān* as "elucidation" or "elucidator." This sense of *bayān* is, in fact, uppermost in Āmidī's explication of the sense of the related term *mubayyan*. This term, he says, is sometimes used of addressed speech that stands by itself, requiring no *bayān*, and sometimes of addressed speech that is in need of a *bayān*, for which a *bayān* has been supplied. (This explication obviously does not qualify as a definition of the term because of its patent circularity.) Quite obviously, *bayān* here represents elucidation, and *mubayyan*, when used in the second of the two ways indicated, means "elucidated." Āmidī mentions no alternative explications of *mubayyan*, and we may assume that its sense was not a matter of great controversy among the Muslim jurisprudents. It apparently does not have the same importance in Muslim dialectic as *bayān*.

Āmidī's examples of "elucidated" speech show us the sorts of things that may be subsumed under this heading: the ambiguous expression whose intended meaning has been elucidated (*buyyina*, a cognate of *bayān*), a general expression that has been shown by a contextual indicator to have a specific reference, an unqualified expression that has been shown by a contextual indicator to have a qualified reference, an act of the Prophet for which a contextual indicator has been discovered that shows what aspect of the act is relevant, "and so on" (*ilā ghayri dhālika*). Āmidī's use of the phrase "and so on" suggests that many more examples could be supplied. As we launch into

his account of the debates over issues related to elucidation, we soon discover what one of these further examples is—the detailing of what is initially presented in an imprecise manner. Innumerable verses in the Qurʾān, for instance, command believers to perform the *salāh*-prayer, without explaining exactly what this entails. The actual performance of the *salāh*-prayer therefore requires some sort of elucidation that will spell out the details of this important ritual.

Elucidation is thus a broad category including a great variety of ways in which one text within the corpus of authoritative texts may impinge upon another. In fact, *all* the ways in which one text may impinge upon another fall within this category, with one exception—abrogation. Abrogation consists of an outright setting aside of the intended meaning of a given text; all other sorts of impingement of one text upon another—those constituting elucidation—entail an affirmation and a strengthening of that meaning.

In the preceding two chapters we have already dealt with issues relating to the impingement of one text upon another (or the impingement of one part of a given text upon another part), but these have been connected in some way with specific kinds of impingement (for example, the indication in one text that a general expression in another text has a restricted reference). The issues we now come to have to do with all the sorts of impingement that come under the heading of elucidation. It is because of their broader ramifications that these issues have not been dealt with earlier in the *Ihkām*.

The first of the eight issues relating to elucidation that Āmidī covers in the *Ihkām* is whether an act of the Prophet may serve as an elucidator.¹⁶ Although acts of the Prophet are recorded in texts, they are in themselves nontextual in character and in this respect stand in contrast to sayings of the Prophet. The issue is thus whether something nontextual may serve as an elucidation. Āmidī gives as an example the Prophet's act of performing the *salāh*-prayer. As noted above, innumerable verses in the Qurʾān contain the words "Perform the *salāh*-prayer" (*aqim al-salāh*). But from these words alone the believer cannot know exactly what is expected from him. Since the Prophet performed this prayer regularly, can his act be regarded as an elucidation of the Qurʾānic injunction in the sense of spelling out the details?

This issue is clearly reminiscent of an issue discussed earlier in the *Ihkām* in the section on the concept of Sunna: can an act of the Prophet serve as an indicator of the Shariʿa?¹⁷ There is a difference, however, between the two issues. In the earlier passage it is made clear that the debate does not pertain to acts of the Prophet that function as *bayān*. The use of the term *bayān* in the earlier passage is instructive: despite Āmidī's claim in the section of the *Ihkām* presently under consideration that *bayān* and *dalīl* are synonymous,

bayān clearly has, in the earlier passage, the sense of “elucidation”: it is, in other words, a subspecies of *dalīl*.

In the earlier passage, the issue is whether an act of the Prophet can serve as an indicator of the Shari‘a in and of itself in the sense of showing without the help of contextual clues that an act is obligatory, recommended, neutral, disapproved, or forbidden *for us*. However, when an act of the Prophet is believed to be serving as an elucidator, its placement within the scale of the five Shari‘a categories is presumed to be already known from some other indicator; the act in this case is simply filling in details not supplied by the other indicator.

Only a paltry few jurists, says Āmidī, were unwilling to assign an elucidatory role to acts of the Prophet. The vast majority believed such a role to have a clear textual basis and to be grounded in rational argument. The textual basis was the Prophet’s saying, “Pray as you see me pray, and learn your rituals from my example.” The rational argument was that observation of an act of the Prophet imparts a more precise knowledge of the details of the *salāh*-prayer and of the rituals of the *hajj* pilgrimage than can a verbal statement. Yet it is the consensus that a verbal statement of the Prophet can serve as an elucidation. How much more, then, should an act of the Prophet, with its greater capacity to convey detail, be able to serve as an elucidation!

This peculiar strength of the act as opposed to the verbal statement is, we must remember, limited to the function of elucidation. As an indicator of the law in its own right, it suffers from an important weakness: the act *qua* act cannot reveal to us its precise character as obligatory, recommended, neutral, disapproved, or forbidden. For this we rely utterly upon the verbal statement. Important linguistic forms such as the *if‘al* form, of course, leave us in the dark, according to many jurists; but all agree that the needed indicators must be found somewhere within the body of verbal statements.

The second issue touches upon situations in which the mujtahid discovers, on the one hand, a saying of the Prophet that is capable of serving to elucidate an obscure passage and, on the other hand, an act of the Prophet that is likewise capable of serving to elucidate that same passage:¹⁸ which of the two—the saying or the act—should be regarded as actually providing the elucidation? Āmidī does not recount a debate of this issue for us but simply lays out his own position. One must first, he says, consider whether or not the saying and the act contradict each other. If they do not, then the question is really which of the two provides the elucidation and which confirms that elucidation. Since interest in this question borders upon pedantry, I shall not here consider Āmidī’s answer to it. Much more momentous is the question of what to do in the event that the saying and the act contradict each other. In

this case the mujtahid must make a choice. We are again in territory reminiscent of an earlier section of the *Ihkām*,¹⁹ for Āmidī has previously dealt with the question of how to handle a contradiction between a saying and an act of the Prophet considered as indicators of the law in their own right. Here the concern is with contradiction between a saying and an act of the Prophet considered solely as elucidations.

An example of such contradiction arises in connection with Qur'ān 2:196, which speaks of combining the required *hajj* pilgrimage with the supererogatory visit to Mecca called the *ʿumra*. This verse does not make it clear whether one who wishes to combine the two must twice perform the circumambulation of the Kaʿba and the running between Safā and Marwa or whether one need perform these rituals only once. It thus falls within the scope of Āmidī's definition of ambiguity, for it bears two possible meanings, neither of which, on the strength of the verse alone, has preponderance over the other. At some point after this verse was revealed the Prophet, on the one hand, said, "Whoever wishes to combine the *hajj* and the *ʿumra*, let him perform one circumambulation and one running," while, on the other hand, he himself, when combining the two pilgrimages, performed both rituals twice. Thus the ambiguous Qur'ānic verse is elucidated in one way by the Prophet's saying and in another way by his acts.

Āmidī's method for dealing with this conflict between elucidations is as follows. If the order in which the saying and the act occurred is known, then if the saying occurred first it should be regarded as providing the requisite elucidation: in other words, the second circumambulation and the second running performed by the Prophet must be considered nonobligatory. On the other hand, if the act occurred first, then the Prophet's saying ("let him perform one circumambulation and one running") must either be regarded as abrogating it, since otherwise the saying would be deprived of its import and become meaningless, or be regarded as indicating that the community as opposed to the Prophet is required to perform the circumambulation and the running only once. In the latter case, the act of the Prophet (i.e., his performing the circumambulation and the running twice) indicates only what is required of the Prophet himself. (The question of the relevance of acts of the Prophet for the community at large was dealt with earlier in the *Ihkām*.) Of these two possibilities, the latter, says Āmidī, is to be preferred on the basis of the principle that any viable alternative to abrogation should be preferred over abrogation. Finally, if the order in which the saying and the act occurred is not known, then we should proceed on the assumption that the saying occurred first and regard it as providing the elucidation.

The third issue is really a conflation of two separate issues:²⁰ whether an elucidating passage in the authoritative texts must be equal in strength (*fi'l-quwwa*) to the passage it elucidates and whether it should be equal to the elucidated passage with respect to its categorization of a given act (*fi'l-hukm*). ("Passage" here should be understood to include passages recording acts of the Prophet along with other kinds of textual material.) The two issues are obviously lumped together because both touch upon the issue of equality; however, upon examining the two issues closely, we soon see that they entail very different sorts of equality.

The phrase "equal in strength" should be understood to mean "equal in indicatory or probative strength." Indicatory strength takes on special importance in the weighing of conflicting indicators: one must formulate the law on the basis of the stronger indicator. Indicatory strength, insofar as it applies to texts, relates both to the authenticity of a text and to its meaning: a passage whose authenticity is more probable than that of another passage or whose meaning is more free from obscurity (i.e., clearer) is to be preferred over the other passage. We shall return to the subject of weighing indicators. Here the question is whether the indicatory strength of an elucidating passage must be at least equal to that of the passage it elucidates; or, to state the question differently, whether the indicatory strength of an elucidating passage may be less than that of the elucidated passage.

The phrase "equal with respect to its categorization of a given act" can best be explained with an example. If we have one passage that indicates simply that the performance of the *salāh*-prayer is obligatory without spelling out the details of this prayer and we have another passage that spells out the details but does not indicate that the prayer is obligatory, we shall, of course, regard the latter as elucidating the former; but we shall not regard it as equal to the former with respect to the *hukm*, since the former indicates a *hukm* (namely, that the prayer is obligatory) whereas the latter does not. If, on the other hand, the latter did indicate that the prayer was obligatory (in addition to spelling out the details), then it would be equal to the former with respect to the *hukm*. (Āmidī points out that some jurists understood the phrase "with respect to the *hukm*" differently, but I shall not go into this part of his discussion here.)

Āmidī records virtually no real dialectic on this pair of issues but simply lays out his own point of view. The indicatory strength of an elucidating passage need not be equal to that of the elucidated passage if the elucidation has to do with clearing up an ambiguity, provided the elucidating passage is able to give some degree of weight, however slight, to one of the two or more otherwise equally possible meanings of the elucidated passage. When a mujtahid is faced

with genuine ambiguity (in the strict sense defined above), all he needs to do in order to proceed to formulate the divine law is to tip the balance in favor of a particular meaning: the lightest feather is sufficient for this task. On the other hand, when it comes to the indication of the restricted reference of a general expression or of the qualified reference of an unqualified expression (both of which come under the heading of elucidation), then a different principle obtains: the elucidating passage must have even greater indicatory strength than the elucidated passage. In this case, it is not a matter of tipping the balance in favor of one of several otherwise equal possibilities; it is rather a matter of diverting an expression from one kind of reference to another kind of reference. If the elucidating passage is only equal in indicatory strength to the elucidated passage, then the mujtahid is stymied between two equally strong possibilities and unable to proceed with the formulation of the law.

As for equality with respect to the *hukm*, this, says Āmidī, is totally unnecessary. In fact, he suggests that the elucidating passage should not indicate the *hukm* at all, for any passage that both indicates a *hukm* and spells out details is self-sufficient as an indicator of the law. A truly elucidating passage should have a relationship of genuine complementarity with the passage it elucidates: both should have something the other needs, one a *hukm*, the other a filling in of details.

The fourth issue relating to elucidation takes up more pages in the *Ihkām* (twenty-four in the 1914 edition) than all the other issues combined.²¹ It is concerned with the subject of delay: is it possible for an elucidation to be delayed until the time when it is needed? In order to understand the import of this question, we may take as an example Qur'ān 5:38: "As for the thief, both male and female, cut off their hands." If we take the Arabic word translated as "hands" (i.e., *yad*) to be ambiguous, with "hand," "forearm-and-hand," and "arm-and-hand" as equally possible meanings, or to have "arm-and-hand" as its literal meaning and "hand" as a possible nonliteral meaning, then we have a verse that requires elucidation. The question is: must we expect such an elucidation to have been given at the time the verse was sent down, or is it possible that it could have been delayed until the time when it was needed? The elucidation would not actually have been needed until an occasion arose requiring the application of the penalty of amputation. We are assuming, of course, that such an occasion did not exist at the time the verse was sent down.

We are obviously dealing here with all sorts of elucidation, including the elimination of ambiguity, the indication of specific or qualified reference, and the filling in of essential detail. Since elucidation is a type of impingement of one indicator upon another (abrogation being the other principle type), the time factor inevitably calls for consideration. If one disallows a

delay, then the elucidation must be presumed to be conjoined in time with the indicator it is elucidating. In this case, one naturally looks for an elucidation within the immediate textual context, for example, a following verse, although an elucidation conjoined in time with the elucidated indicator need not be textually conjoined with it. It is possible, for example, for a saying of the Prophet, found within the collections of Sunna, to be conjoined in time with a Qur'ānic verse.

On the issue under consideration the Muslim jurists are, says Āmidī, divided into several different schools of thought. Most of his fellow-Shāfi'īs as well as a party of the Hanafīs hold that it is possible for an elucidation to be delayed until the time of need, whereas some Shāfi'īs including Abū Ishāq al-Marūzī and Abū Bakr al-Sayrafī, some Hanafīs, and the Zāhirīs maintain that this is not possible. Others make distinctions, allowing delay in some cases but not in others. Karkhī, for example, along with certain *fiqh* specialists, maintains that delay is possible in cases where elucidation relates to ambiguity but not in other cases. Others say that delay is possible if the thing being elucidated is a command, but not if it is an informative statement (*khābar*).

Abu'l-Husayn al Basrī, like Karkhī, considers delay in cases involving ambiguity to be possible, but in regard to other cases draws a distinction between a detailed elucidation (*al-bayān al-tafsīlī*) and a general or vague elucidation (*al-bayān al-ijmālī*): only a detailed elucidation may in these cases be delayed; a general elucidation may not. Thus the Legislator, in declaring that the hands of thieves are to be cut off, can be counted upon to give at the same moment at least a vague indication that he does not have in mind all thieves, even if he does not state precisely which thieves he has in mind. The more precise statement can await the first occasion for applying the penalty of amputation.²²

The first of the above-mentioned views is correct, says Āmidī: the delay of an elucidation until the time of need is indeed possible. But not all the arguments cited in support of this view are valid. Āmidī provides us with a critique of seven arguments based on texts and two rational arguments before presenting us with arguments he believes to be sound. I shall here concentrate upon the latter, although the former take up the greater number of pages.

First of all, there are text-based arguments. One of these makes use of Qur'an 8:41: "And know that whatever you take as spoils of war, a fifth thereof is for God, and for the messenger, and for the kinsman." Sometime after this verse was sent down, it is argued, came an elucidation to the effect that the booty was for the warrior and that "the kinsman" was a reference to the Banū Hāshim and to the Banū Muttalib.

But, say the adversaries, this elucidation was detailed. To say that it was delayed is not to say that a general elucidation was detailed. Āmidī's reply is, first of all, that even if only a detailed elucidation was delayed his point has been proven—it is possible for an elucidation to be delayed. Second, there is, on the other hand, no proof that a general elucidation was given immediately. Āmidī here touches upon the main problem with the notion of a general elucidation, which plays a key role in the thinking of Abu'l-Husayn al-Basrī on the subject of delay of elucidation (see above): our sources—the Qur'ān and the Sunna—are devoid of examples of this kind of elucidation. And it is a principle of Muslim historical inquiry (as developed within the science of jurisprudence) that if a thing is not reported it must be presumed not to have occurred. One cannot make history out of one's imagination.

Āmidī further argues that there are a great many general commands in the authoritative texts whose details were supplied well after the commands were first given. Examples are "Perform the *salāh*-prayer," "pay the poor-due" (Qur'ān 2:110, etc.), "As for the thief, both male and female, cut off their hands" (5:38), "Strive with your wealth and your lives" (9:41).

This textual evidence is, in Āmidī's presentation, reinforced by a rational argument. If it is impossible for an elucidation to be delayed, this impossibility must be due to the elucidation itself or to something extraneous to it. It cannot be due to the elucidation itself, for there is nothing intrinsic to the nature of an elucidation that makes it incapable of being delayed. And the only thing extraneous to the elucidation that it could be due to is the ignorance of the one charged with obeying the law (i.e., the *mukallaf*) as to the intended meaning of the Legislator, for we can observe that when a person charged with obeying the law understands the intended meaning behind an obscure expression in the texts it is because an elucidation has occurred and that when such a person does not understand this meaning it is because an elucidation has not occurred. (Āmidī here seems to be contradicting his definition of *bayān*, which, if taken in all seriousness, makes it impossible for one to infer from an absence of understanding an absence of a *bayān*.) Some may conceivably argue that ignorance of the intended meaning of the Legislator on the part of one charged with obeying the law is an impossibility since if one is truly ignorant one cannot be truly under a charge.

It is important to understand that the charge under consideration here is related to a specific text. If we consider that Qur'ān 5:38, for example, lays upon the ruler the charge to apply the penalty of amputation to cases of thievery and we acknowledge at the same time that, prior to the appearance of an elucidation that makes clear the intended meaning of the key word *yad*, the ruler must be considered ignorant of the full intended meaning of Qur'ān

5:38 (not to mention other ambiguities or obscurities in this verse), we entrap ourselves, so this argument runs, in a clear contradiction: for how can the ruler be under a charge by virtue of Qur'ān 5:38 when he is ignorant of that with which he is charged?

If we say that the state of being under a charge does not arise until the elucidation has been provided, then we deprive Qur'ān 5:38 of any role in the imposition of a charge and in effect remove it from the sphere of the divine law. But this is contrary to Muslim belief about all such passages and about the addressed speech of the Legislator in general. Now, if ignorance of the intended meaning of the Legislator on the part of one charged with obeying the law is an impossibility, then it follows that a delay of an elucidation is likewise an impossibility. But, says Āmidī, if we argue this way, we must apply this same logic to abrogation and conclude that a delay of abrogation is impossible. Since this conclusion is unacceptable to all jurists, we must reject the premise, namely, that ignorance of the intended meaning of the Legislator is impossible. It is important, in understanding Āmidī's line of thought, to bear in mind that the delay he is speaking of is a delay until the time of need (a notion I have explained above). When the time of need arrives, then ignorance of the intended meaning of the Legislator becomes a more serious matter.

But cannot it be argued that where there is genuine ambiguity an elucidation cannot be delayed since this would mean that prior to the elucidation the speaker has not effectively conveyed his intended meaning? The effectiveness of divine speech in particular is a fondly held principle of Islamic thought, for ineffective speech is unseemly, and nothing unseemly may be associated with God. To this Āmidī replies that when a person charged with obeying the law encounters an ambiguous expression in the authoritative texts he cannot be said to be in total ignorance of the Legislator's intended meaning, for he at least knows that it is one of several possible meanings that the ambiguous expression triggers in his mind and he is able to understand that whichever of those meanings is the intended one is binding upon him. In other words, the addressed speech of the Legislator has been effective in accomplishing its purpose, which is to place the addressee under a charge, and there is nothing unseemly, therefore, about the ambiguity.

But what, then, about a nonambiguous expression whose intended meaning is one other than the literal meaning? Here the situation is rather different, for in this case the addressee cannot be said to understand that the intended meaning of the Legislator is one of a number of possible meanings that come to his mind upon hearing the expression; instead, a single meaning comes to his mind, since a nonliteral meaning is a meaning that by definition

does not occur immediately to the mind of the hearer. How can the speech of the Legislator be said to be effective in this case? If we say that the Legislator intends to communicate something at the time of speaking (as piety requires us to do), then what is it that he can be said actually to communicate? So long as the elucidation is delayed, what he in fact communicates is not his intended meaning, which is nonliteral, but a meaning he does not intend (the literal meaning). The conclusion from all this can only be that a delay of the elucidation is impossible. In response to this argument, Āmidī goes back to the strategy he has just used. We may apply the same logic to abrogation and conclude that a delay of abrogation is impossible. Since this conclusion is unacceptable, the premise from which it is drawn must be rejected.

Āmidī utilizes this same rather complex rational argument to support his position on three other issues (the fifth, sixth, and seventh) related to the issue just discussed. One of these (the fifth) is debated only among those jurists who took the position that a delay of an elucidation is impossible:²³ is it possible for the communication of a rule of law revealed to the Prophet to be delayed until the time of need? The majority, says Āmidī, hold such a delay to be possible, while a minority disagree.

This issue clearly takes us beyond the subject of elucidation, and one may wonder why the discussion of this issue is placed in a section of the *Ihkām* devoted to that subject. However, on reflection we can easily grasp the reason. This issue is so closely tied to the previous one that no other placement could have been more appropriate. It is important that we understand how the previous issue leads to this one. An elucidation relates to a *previously communicated rule of law*. We have learned that, for Āmidī and others, a passage that elucidated another could not itself indicate a rule of law, for if it did it would be sufficient in itself and would not have a genuinely elucidating function. Elucidation entails an impingement of one passage upon another and a kind of complementarity between the two passages, as noted above. The problem with the notion of a delay of elucidation for certain jurists was that it seemed to leave a previously communicated rule in a suspended state: it was not communicated in a wholly effective manner. Any degree of ineffectiveness in communication was, as we have seen, a blight upon the perfection of the Legislator: it could not, therefore, be acknowledged. But what about a delay in the entire process of communicating a rule of law (inclusive of all necessary elucidations, which in the view of these jurists must be concurrent with the communication of the rule as such): was this possible? Those who answered in the affirmative—the majority of participants in the debate over this issue—obviously considered that their view did not compromise the effectiveness of the speech of the Legislator. There was, in

their thinking, no conceivable reason why the full communication of a rule of law should occur at one time as opposed to another, so long as it occurred prior to the time of need. Āmidī, in working out his own justification for this position, repeats the main points of the rational argument used to support his view on the previous issue.

Another issue in the cluster of interrelated issues (the sixth) is whether it is possible for an indication of specific reference of a general expression (*takhsīs al-‘āmm*) to be delayed until the time of need.²⁴ This issue, too, says Āmidī, is debated only among jurists who hold that a delay of an elucidation is impossible. Quite obviously, these jurists do not include indication of specific reference within the category of elucidation, as do Āmidī and, apparently, most other jurists. In order to make sense of the debate over this issue (which occupies barely more than a page in the 1914 edition of the *Ihkām*) we should keep in mind the fact (noted above) that in the debate over whether a delay of an elucidation was possible some jurists held that a delay was possible only for the elucidation pertaining to an ambiguous expression. From this we can see why certain kinds of elucidation pertaining to problems other than strict ambiguity (in the sense defined in these pages) could give rise to issues in their own right. Āmidī joins the ranks of those who regard a delay of indication of specific reference as possible, again employing the rational argument set forth in his discussion of the fourth issue.

Whereas the fifth and sixth issues were debated only among jurists who regarded a delay of elucidation as impossible, the seventh was debated among those who regarded such a delay as possible.²⁵ Among them the further question arose of whether it is possible for an elucidation to unfold gradually in stages. Again Āmidī, true to his general posture on the subject of delays, joins the ranks of those who regard a gradually unfolding elucidation as possible. The rational argument set forth in the discussion of the fourth issue works here, too, he tells us. There are, furthermore, actual cases of an unfolding of an elucidation in stages. For example, after Qur’ān 9:5 (“Slay the idolaters”) was sent down, first those protected by treaty were excepted, then at a later point hired servants, and, finally, women.

The eighth and last issue relating to the subject of elucidation is phrased in terms that connect it specifically with indication of specific reference (*takhsīs al-‘āmm*),²⁶ which, as we have noted, is included within the category of elucidation broadly conceived. If indeed this issue is confined to indication of specific reference, we may wonder why Āmidī has not placed the discussion of it in the section of the *Ihkām* that deals with issues related to reference (see Part II, chapter 8).²⁷ However, as we proceed into Āmidī’s discussion, we soon sense that this issue has a bearing on all types of impingement of one passage

upon another. In fact, much of what Āmidī says has a bearing upon the entire enterprise of formulating the divine law upon the basis of indicators.

Āmidī tells us that Abū Bakr al-Sayrafi maintained that when a mujtahid encounters in the texts a general expression—that is to say, an expression that carries a general reference (*‘umūm*) by virtue of its primordial assignment (*wadʿ*)—he should treat the general reference as certain until such time as he discovers an indicator that shows that the Legislator intended a specific reference, in which case he could change his mind. However, the specialists in the science of jurisprudence (among whom Āmidī does not seem to include Sayrafi) unanimously took exception to this procedure, which seemed to make light of the concept of certainty. One cannot, they said, claim certainty until *after* one has conducted and completed an exhaustive search to see if there is, anywhere in the texts, an indicator that shows that the Legislator intended a specific reference, and even then one may claim certainty only if one is absolutely sure that no such indicator exists.

In fact, the Muslim jurists disagreed as to whether this absolute assurance was even possible. The texts were vast, and the problems they gave rise to were many. All agreed that the mujtahid should be able to proceed to formulate the divine law after he had conscientiously completed his search, but some felt that this important activity had to take place in the absence of complete certainty. Those who felt that certainty was possible—and Āmidī includes the great Bāqillānī among them—argued that any discussion of general expressions in the authoritative texts inevitably engages the energies of countless mujtahids over a long period and that if there were indicators of a specific reference in the texts these mujtahids surely would not fail to notice it. Furthermore, if God, in employing a general expression, intended a specific reference, it is unthinkable that he would not provide an indicator of the specific reference and see to it that this indicator was duly communicated to those charged with obeying the law.

Against this view, many jurists, including Ibn Surayj, Juwaynī, Ghazālī, and Āmidī himself, argued that the methods used in the search for indicators were intrinsically incapable of producing certainty. The claim that a great many mujtahids could not fail to discover a particular indicator cannot be conclusively proven, for the possibility, however slight, that every single mujtahid might overlook an indicator must always be recognized. Furthermore, even supposing that mujtahids in a particular generation discovered a particular indicator, there could be no certainty that information about their discovery would be transmitted to future generations. As for the statement that God would necessarily provide the relevant indicators and see to it that they were duly communicated to those charged with obeying the law, this is

a gratuitous assumption that need not be accepted. Now, if indeed there is no way to achieve certainty in these matters, then to require certainty in the use of general expressions is tantamount to making these expressions entirely useless. One must therefore settle for considered opinion in all such matters. When a mujtahid has diligently searched the texts for an indicator of specific reference and found none and become convinced that further searching would be in vain, he is entitled *at that point* to form the opinion that no such indicator exists and to formulate the law accordingly. Such is, in fact, the case with all types of indicators.

Diversion to Nonapparent Meaning (Ta'wīl)

Not the least in importance among the types of elucidation of which we have taken notice in the preceding section is that which shows the intended meaning of a *zāhir*-expression to be a meaning other than its literal meaning. Since this type of elucidation—called *ta'wīl* in Arabic—raises a number of special considerations, Āmidī devotes a short section of the *Ihkām* to it alone.

The term *ta'wīl* is closely connected with the term *zāhir*, and since the latter is employed in the definition of the former, Āmidī is obliged to define it first.²⁸ According to Āmidī, the lexicographers treated *zāhir* as synonymous with *wādih*, “clear, manifest,” and *zahara*, the verb from which it is derived, as synonymous with *ittadaha*, “to become manifest,” and *inkashafa*, “to appear, become unveiled.” As I noted in an earlier chapter, the term is applied by Muslim writers both to expressions and to meanings. As a term applied to meanings, “apparent” is as good a translation as any. One can speak comfortably in English of an “apparent meaning” but not of an “apparent expression.”²⁹ In my earlier discussion, I suggested that, as a term applied to expressions, it may be suitably rendered as “univocal.”

It is as a term applied to expressions (or, more exactly, vocables) that Āmidī defines *zāhir*. But before giving us his own definition he reviews that of his predecessor, Ghazālī. A *zāhir* expression, said Ghazālī, is “an expression from which a meaning is understood in a manner that entails strong conviction [*ghalbat al-zann*] but not certainty.” From the ensuing discussion it is clear that the strong conviction mentioned in this definition is a conviction to the effect that the meaning understood from the expression is the meaning intended by the speaker. Thus a *zāhir* expression is, according to this definition, an expression that yields a meaning that the hearer regards as highly likely to be the intended meaning without being certain that this is so. The problem with this definition, in Āmidī’s view, is that it rules out expressions that do not give rise to such a high level of conviction about their meaning.

For Āmidī, all that is required for an expression to be *zāhir* is that it give rise to a sense of probability that its meaning is the intended meaning. The degree of probability is not important: it may be very great or it may be very slight. Another defect that Āmidī sees in Ghazālī's definition is its inclusion of a redundant phrase—"but not certainty."

According to Āmidī, the *zāhir* expression is most correctly defined as "an expression that signifies a meaning by virtue of its having been assigned to that meaning, either originally [i.e., in the primordial moment in which the *Lughā* was invented] or through postprimordial convention [*ʿurf*], while remaining subject to the unlikely possibility that it may in fact have some other meaning."³⁰ The phrase "that signifies a meaning by virtue of its having been assigned to that meaning" rules out expressions that in fact do not signify their meanings by virtue of having been assigned to those meanings. When an expression such as *asad* can be shown from the context to signify, not "lion" (the meaning to which it was originally assigned) but "fearless man," then it is clearly not signifying a meaning by virtue of its having been assigned to that meaning, for *asad* was not assigned to "fearless man." Accordingly, it may not be regarded as a *zāhir* expression; however, when there is no contextual indicator that shows that it signifies a meaning other than "lion," then we may presume that it is signifying its meaning by virtue of its having been assigned to it (i.e., that it is signifying "lion") and regard it as *zāhir*.

The significance of Āmidī's definition can be better grasped by comparing it with his definition of the ambiguous expression. The latter, he has told us, is an expression that signifies one of two meanings, neither of which has any preponderance over the other. "Signifies," I suggested, in this context means "signifies as the meaning intended by the speaker." According to the common use of "signifies" (as a function of mere lexical items), an ambiguous expression (the supreme case being, of course, the homonym) signifies two or more meanings, namely, the meanings primordially assigned to it; but in this context it is perceived as a signifier of *intended* meaning only. The problem with the ambiguous expression is that it is not clear which meaning is the intended meaning: all meanings are equally eligible to be considered the intended meaning, with no one meaning having any preponderance over the others. What distinguished the *zāhir* expression from the ambiguous expression is that the preponderance of one meaning over the others that is lacking in the case of the latter is operative in the case of the former. Like the ambiguous expression, the *zāhir* expression has multiple meanings, but it differs from the ambiguous expression in that one (emphasis on one) of these meanings has preponderance over the others. It does not, therefore, depend on the context

to give this meaning preponderance, as does the ambiguous expression; its dependence on the context is, rather, of a wholly different kind.

The reason for the preponderance of one meaning over the others in the case of the *zāhir* expression and the lack of preponderance in the case of the ambiguous expression is that one and only one meaning, in the case of the *zāhir* expression, is the literal meaning, whereas in the case of the ambiguous expression a plurality of meanings are literal. Any meanings that the *zāhir* expression has other than the literal one are, of course, nonliteral, and a literal meaning always has preponderance over nonliteral meanings. It is, as noted in an earlier chapter, from this combination of univocality and preponderance of literal meaning that the *zāhir* expression derives its distinctive character. To put the matter in terms used elsewhere in this book: when the mujtahid encounters an expression in the texts that has a single literal meaning he may make a presumption in favor of that meaning's being the meaning intended by the speaker/author. The literal meaning is always *ab initio* the probable intended meaning; nonliteral meanings are always *ab initio* "outweighed" (*marjūh*) by the literal meaning.

When applied to meaning, *zāhir*, as I have suggested, means "apparent." *Zāhir* thus does not, contrary to common belief, mean "literal." An apparent meaning is a literal meaning, but it is much more. A homonym has literal meanings, but as they compete with one another for preponderance without any of them being preponderant *ab initio* these literal meanings may not be considered apparent. An apparent meaning is an apparent *intended* meaning; since there is no reason *ab initio* to regard any one of the meanings of a homonym as more likely than the others to be the intended meaning, none may be called the apparent meaning. An apparent meaning is thus a literal meaning that by virtue of its being the sole literal meaning may be regarded as the probable intended meaning. That it is probable is implied in Āmidī's application of the term *marjūh*, "outweighed," "nonpreponderant," to the nonliteral meanings. If the nonliteral meanings are *marjūh*, the literal meaning is clearly *rājih*, "preponderant," "probable."

Āmidī explains the various parts of his definition along the lines of the foregoing comments. The phrase "while remaining subject to the unlikely possibility that it may in fact have some other meaning," he says, rules out expressions whose literal meanings are known with absolute certainty to be the intended meaning. Such expressions, we learn later, are classified as *nass* (not to be confused with *nass* as a general designation for the Qur'ānic and Sunnaic texts), not as *zāhir*. When a contextual clue is so decisive as to leave no doubt whatsoever that a speaker, in using an expression, intends to convey the meaning to which it was assigned, then the possibility that some other

meaning is intended no longer exists, and the expression in this case is no longer *zāhir*.

Āmidī further notes that the phrase “unlikely possibility” in his definition of the *zāhir* expression rules out the homonymous expression. I have already explained the difference between the *zāhir* expression and the homonym (the major subcategory of the ambiguous expression). It is important to understand that the preponderance of one meaning over the others that is the distinguishing mark of the *zāhir* expression may be ever so slight: a feather can be sufficient to tip the scale in favor of one meaning thus rendering all other meanings “unlikely.”

In defining *ta'wīl* Āmidī again first takes account of Ghazālī's definition: *ta'wīl* is a possible meaning of an expression that a supporting indicator has rendered more probable than the meaning that the expression signifies as a *zāhir* expression (i.e., the apparent meaning). The problem with this definition, says Āmidī, is that it identifies *ta'wīl* with a possible meaning (*ihtimāl*) when it should be identified with the *diversion* of that expression from its apparent (i.e., sole literal) meaning to the other meaning. Furthermore, it does not include *ta'wīl* that rests upon certain rather than merely probable grounds; and it does not make it clear that what it defines is valid *ta'wīl* as opposed to *ta'wīl* in general.

The correct approach, says Āmidī, is to define *ta'wīl* as “the diversion, attested by a [contextual] indicator, of an expression to a meaning that is not its apparent meaning but is nonetheless a possible meaning.”³¹ The term “apparent” (*zāhir*, here used to modify a meaning rather than an expression as such) rules out the use of a homonym in one as opposed to another of its literal meanings. (Let us remember that a homonym is an expression no one meaning of which can be singled out as the apparent meaning.) The phrase “is nonetheless a possible meaning” rules out the use of an expression to convey an impossible meaning, for example, the use of *asad* to signify “tree” (which, unlike “fearless man,” is entirely out of the question). Finally, “attested by a [contextual] indicator” distinguishes valid *ta'wīl* from invalid *ta'wīl*, the latter being *ta'wīl* that is not attested by contextual indicators.

I conclude from Āmidī's discussion that *ta'wīl* is an intertextual operation, not something the mujtahid does but something he discovers, and that it is therefore not entirely appropriate to regard this term as designating an interpretive activity. The key phrase in Āmidī's definition, *haml al-lafz 'alā ghayr madlūlih al-zāhir minhu*, can, I think, be rendered as “the diversion of an expression from its apparent meaning to another meaning,” for in the discussion that follows the definition he clearly uses the term *haml*, “carrying,” interchangeably with *sarf*, “diversion.” *Sarf* is a function of a contextual

indicator: it is the context that diverts an expression from one meaning to another, although this can also be said to be done by the speaker himself. Furthermore, we should note that Āmidī, when speaking of what the mujtahid does, prefers the term *ta'awwul*.

The claim to have discovered a *ta'wīl* is a claim that a mujtahid must, quite obviously, make with the utmost caution, since what he is claiming is a ground for setting aside the most compelling signification of meaning that expressions are capable of performing on their own without the intervention of the context. Consideration of the context will, of course, always enter into a mujtahid's deliberations over a text. Even apparent meaning will be checked against the context. But the principle of the preponderance of literal meaning can only mean that he will fail to find evidence of *ta'wīl* more often than he will find it and that it is generally the apparent meaning that will prevail. Apparent meaning is thus a foundation without parallel in the enterprise of formulating the divine law. That law will, more often than not, be identical with apparent meaning. Accordingly, the *zāhir* expression ranks supreme among the expressions that make up the *Lughā*.

In reviewing the lexical meaning of *ta'wīl*, Āmidī notes that it is derived from *āla*, "to go back," and that from this same verb is derived the cognate verb *ta'awwala*. The latter is used in statements such as *ta'awwala fulānun al-āyata 'l-fulāniya*, which Āmidī explains in Arabic as meaning *nazara fulān ilā mā ya'ūlu ilayhi ma'nāhā* ("So-and-so inquired into what its meaning [e.g., the meaning of such-and-such verse in the Qur'ān] went back to"). Thus *ta'awwul* seems to be the postulation by a mujtahid of "that to which the meaning of an expression goes back," that is to say, of a meaning other than the apparent meaning of an expression. *Ta'wīl*, on the other hand, seems to be the *taking back* of an expression to a meaning other than the apparent meaning, the diversion of an expression from one meaning to the other. The role of the contextual indicator is supportive in both cases: in the case of the mujtahid it supports a particular interpretation; in the case of the speaker it indicates (or accomplishes) the diversion itself. It is important here to remember that contextual indicators are always *supplied by the speaker* and are a vital part of the process of conveying meanings. Contextual indicators are cooperative (or co-functional) with the primary indicator (i.e., the expression upon which attention is focused) in the conveying of meanings.

The supporting contextual indicator can, incidentally, according to Āmidī, itself be either probable or certain. If it is probable, then obviously the meaning that emerges with its support can be no more than probable, since the principal expression does not yield more than a probable meaning. It can, however, increase the degree of probability of meaning. Where the supporting indicator

is certain, then the end result is certain meaning. If I have a certain indicator, one that leaves no doubt whatsoever in my mind, that a speaker, in using the word *asad*, meant "fearless man" rather than "lion," then "fearless man" becomes the certain, as opposed to a merely probable, meaning.

Āmidī is careful to emphasize that only a *zāhir* expression can be subject to *ta'wīl*. If I am certain, thanks to conclusive supporting indicators, that *asad* in a given instance signifies "lion," then *asad* in this same instance cannot be subject to *ta'wīl*: it is *nass*, not *zāhir*. If I find an indicator that suggests that this expression signifies "fearless man," I must, if the indicator is probable, abandon this meaning in favor of the one supported by the conclusive indicators. If I think that the indicator favoring "fearless man" is conclusive, then something has gone wrong in my investigation: something I have imagined to be conclusive must in reality be inconclusive.

Similarly, if I encounter an ambiguous expression such as a homonym, I may not postulate a *ta'wīl*, for in this case I do not have a true *zāhir* expression, one having a single preponderant meaning that I may regard as apparent. An ambiguous expression may, of course, be used for a nonliteral meaning. *ʿAyn*, for example, may be thus used for a nonliteral meaning connected with either of two literal meanings, "eye" or "spring." But to use it thus is not to engage in *ta'wīl*. *Ta'wīl* applies exclusively to the *zāhir* expression.

The reader may wonder why throughout Āmidī's entire discussion of the *zāhir* expression and *ta'wīl* there is no mention of two concepts that are obviously closely related to these—the concepts of *haqīqa* and *majāz*, which I examined in an earlier chapter.³² Āmidī's definition of *zāhir* is quite obviously reminiscent of his definition of *haqīqa*, but there are important differences between the two concepts that I noted in the earlier chapter. The concept of *ta'wīl* seems clearly to amount to a transformation of a *zāhir* expression into a *majāz*-expression. Why Āmidī makes no mention whatsoever of the term *majāz* in his discussion of *ta'wīl* is somewhat puzzling, but we have no choice, considering the nature of the *majāz*-expression in his thinking, but to understand *ta'wīl* as involving the sort of transformation just mentioned. Furthermore, we need to keep in mind the extremely comprehensive character of the concept of *majāz* in the thinking of the Muslim jurists. Although a *majāz*-expression may be a metaphor or figure of speech in the sense in which we usually understand those terms in English, it may also be virtually any expression used to convey a meaning other than its literal meaning.

Āmidī's definition of the *majāz*-expression, it will be recalled, made mention of a connection between the nonliteral meaning signified by the expression and the literal meaning from which it is diverted. There is, I think, an affinity between this notion of a connection between the nonliteral and literal

meanings and his insistence upon the limit to which *ta'wīl* is subject: it is limited to possible, that is to say, feasible meanings. *Ta'wīl* is not, in other words, an unrestricted rhetorical activity: if one is not using an expression to signify its apparent meaning, one must limit oneself to the range of unlikely possible meanings that the expression will sustain, and these seem to consist of meanings that have some sort of connection with the apparent meaning. *Asad* is thus capable of signifying “fearless man,” but it is not capable of signifying “tree,” for this has no significant connection with the literal meaning of *asad*, “lion.”

The practice of attributing *ta'wīl* to the authoritative texts and of taking *ta'wīl* into account in the formulation of the law is a very old one, says Āmidī, one which goes back to the very first generation of Muslims. Moreover, legists in all generations, beginning with that of the Companions of the Prophet, have engaged in this practice without encountering any objection on the part of any of their fellows. In other words, the practice has the stamp of approval of the Ijmā'. This no doubt accounts for the fact that Āmidī records no debate over the legitimacy of the practice. On the other hand, in view of the debates relating to *majāz*-expressions recorded earlier in the *Ihkām*,³³ it is difficult to believe that there was no debate whatsoever over the legitimacy of this practice. The reader may recall that Āmidī recorded two debates relating to *majāz*-expressions: a debate over whether such expressions are part of the *Lughā* and a debate over whether the *Qur'ān* contains such expressions. In the former debate a small party—Abū Ishāq and his followers—took the position that no such thing as a *majāz*-expression is to be found in the *Lughā*, and in the latter debate the *Zāhiri* school as well as a small party of the *Rawāfid* took the position that *majāz*-expressions are not to be found in the *Qur'ān*.

Clearly, any theorist who denied the existence of *majāz*-expressions within the *Lughā*—which was tantamount to denying their existence altogether—could hardly have recognized the phenomenon of *ta'wīl*, since the use of an expression for a meaning other than the literal meaning would presumably be out of the question in this view. If we assume that those jurists who admitted the existence of *majāz*-expressions within the *Lughā* but denied their existence in the *Qur'ān* extended their way of thinking to sayings of the Prophet, then we must conclude that they would have disallowed *ta'wīl* as a feature of the authoritative texts. However, Āmidī makes no reference to these debates in the course of his discussion of *ta'wīl*, and we are therefore left in the dark as to how to square his statement that the acceptability of the notion of *ta'wīl* is supported by the Ijmā' with these debates.

But, insists Āmidī, the formulation of the law on the basis of a presumed *ta'wīl* is valid only if certain conditions have been met.³⁴ First of all, the one attempting such a formulation must possess the qualifications requisite for

this particular task. Second, there must be, with respect to any expression believed to have been “taken back” (to employ the literal sense of the word *ta’wīl*) to a meaning other than its literal meaning, a substantial body of scholarly opinion to the effect that the meaning of the expression that is set aside is indeed its apparent (*zāhir*) sense and that the meaning adopted in place of the apparent meaning is indeed a meaning that the expression is capable of sustaining (by virtue, we are apparently to understand, of some sort of “connection” with the apparent meaning). Finally, the indicator used to support the adoption of the nonapparent sense must be sufficient to render it more probable than the apparent sense. If the nonapparent sense remains less probable than the apparent sense, or even if it becomes but equal to it in degree of probability, a valid postulation of *ta’wīl* has not taken place. In other words, the supporting indicator must be strong enough to overrule the initial preponderance enjoyed by the apparent meaning and to replace it with a preponderance of the nonapparent meaning.

Āmidī records eight debates of issues relating to *ta’wīl*.³⁵ None of these, as I have indicated, relate to the validity of the notion of *ta’wīl*. Rather, they all relate to particular controversial instances. In all cases, the *ta’wīl* in question is affirmed by Abū Hanīfa or his followers and denied by others, including Āmidī himself. We thus get the impression that, while all parties recognize the validity of *ta’wīl*, the Hanafis were particularly free in their postulations and that other legists felt the need to put limits on their utilization of the *ta’wīl* principle. What is wrong with the Hanafī postulations, we find, is that they do not have sufficient supporting indicators; Āmidī therefore classifies them all as “far-fetched” (*ba’ida*).

I shall not here take up my reader’s time with the details of these debates. It will, however, be instructive to look briefly at a few of the passages around which these debates revolved. These will give us a better idea of the sorts of things that were placed under the rubric of *ta’wīl*.

When Ghaylān became a Muslim, having at the time ten wives, the Prophet said to him, “Take four and leave the others.” Similarly, he said to Fayrūz al-Daylamī, who at the time of becoming a Muslim was married to two women who were sisters (a marriage forbidden in Islam), “Take whichever of them you wish and leave the other.” According to Āmidī, the apparent (*zāhir*) sense of these sayings of the Prophet is that Ghaylān’s marriage to four of his wives and Fayrūz’s marriage to one of his are valid pre-Islamic marriages that retain their validity after conversion to Islam. The Hanafīs, he says, attribute a nonapparent meaning to these sayings in claiming that they mean that Ghaylān’s and Fayrūz’s pre-Islamic marriages are *all* invalid and that they must contract proper Islamic marriages with certain of their wives.

The Qur'an declares, "When you rise up for prayer, wash your faces, and your hands up to the elbows, and lightly rub your heads and your feet up to the ankles" (5:6). According to Abū Hanīfa, the verse means that one should lightly rub one's head but *wash* the feet up to the ankles. Since the apparent meaning of the words is that one should lightly wipe the feet up to the ankles, Abū Hanīfa's interpretation entails a preference for a nonapparent meaning.

All the other instances of Hanafi-sponsored *ta'wīl* recorded by Āmidī take the form of an indication of specific reference of a general expression (*takhsīs al-āmm*). In chapter 8 we noted that indication of specific reference entails setting aside a general reference, considered as the literal sense of a general expression, in favor of a nonliteral specific reference and that a general expression that thus acquires a specific reference is classified as *majāz* in relation to that reference.³⁶ Here we find indication of specific reference subsumed under the heading of *ta'wīl*, which bears out the connection, noted above, between *ta'wīl* and the *haqīqa/majāz* distinction. Why Āmidī has elected to deal with these instances of indication of specific reference in a section of the *Ihkām* devoted to *ta'wīl* rather than in the section devoted to indication of specific reference is not entirely clear. Are we to assume, perhaps, that he lacks other controversial topics suited to this section? These instances do, of course, enable him to have at least something to offer his reader in the way of controversies related to *ta'wīl*. One may wonder why the controversies relating to *majāz*-expressions recorded in earlier sections of the *Ihkām* were not placed here. However, it is not our prerogative to question decisions made by an author centuries ago.

Among the passages involved in these further instances of Hanafi-sponsored *ta'wīl* are the following: (1) "Whatever woman marries herself to someone without the permission of her guardian has entered a marriage that is invalid in the utmost degree" (a saying of the Prophet). The Hanafis take the phrase "whatever woman" to apply only to certain groups of women: some say female minors, others slave girls, others females who have been manumitted by written contract. In thus interpreting the phrase, they are setting aside the apparent sense of the phrase (which is inclusive of all women without exception) in favor of a nonapparent sense. (2) "Whoever does not undertake the fast during the night [that is, before daybreak] has not fasted" (a saying of the Prophet). The Hanafis consider the word "fast" (*siyām*) to be a reference to the compensatory fast or the fast undertaken in connection with a vow, not to fasting in general, whereas the apparent sense embraces all types of fasting. (3) "And know that whatever you take as spoils of war, a fifth thereof is for God, and for the messenger and for the kinsman" (Qur'an 8:41). Abū Hanīfa considered "the kinsman" as referring only to needy kinsmen,

thus setting aside the general reference proper to the expression in favor of a specific reference.

IMPLICATION

We are now ready to turn to those topics in the *Ihkām* that are placed under the heading of “the indicatory functioning of what is other than the ordered language of the texts” (*dalālat ghayr al-manzūm*). It is important to understand that we are still concerned at this point with the indicatory functioning of *texts*, but whereas in the previous chapters (7 through 9) we have been concerned with the functioning of the texts considered as bearers of explicit meaning, as repositories of composed discourse (*manzūm*), we shall now be concerned with the functioning of the texts considered as bearers of implicit meaning, discoverable “between the lines” of the composed discourse.¹

I shall, as indicated earlier, refer to the indicatory functioning of what is between the lines of a text—the *ghayr manzūm* of the text—as *implication*. Although one could also speak of this functioning as a type of signification of meaning, I have in this book reserved the term “signification” for the indicatory functioning of “the lines” of the text, that is to say, the ordered language of which the text is made. Expressions, let us remember, signify meanings by virtue of having been assigned to meanings in the course of the primordial invention (*wadʿ*) of the Lughā. I have called the meanings to which expressions have been primordially assigned literal meanings. Expressions sometimes, of course, signify meanings other than their literal meanings, thus coming under the heading of *majāz*-expressions. But even when expressions signify nonliteral meanings, they remain part of the ordered language, the composed lines, of the text.

To signify a nonliteral meaning in the manner of a *majāz*-expression is not to imply a meaning. When an expression is used in the *majāz* mode, the speaker has set aside the literal meaning and replaced it with the nonliteral meaning; or, to use the language more commonly employed by the Muslim jurisprudents, the speaker has diverted the expression away from its literal meaning to a nonliteral meaning. When an expression or group of

expressions implies a meaning, the explicit meaning the expressions signify is not set aside. Implied meaning co-exists with explicit meaning.

Āmidī presents us with four principal types of implication, which he explicates by means of the following explication-through-disjunction (*taqṣīm*).² Implication is either integral to what a speaker is intending to get across in a particular passage or it is not. If it is integral to what the speaker is intending to get across, then either it is such that the truthfulness of the speaker and the correctness of his speech depend on it, in which case it is called in Arabic *dalālat al-iqtidā'*, or it is not. If the latter, then either the implication arises directly from the explicit meaning of the text, in which case it is called *dalālat al-tanbih wa'l-īmā'*, or it does not arise directly from the explicit meaning, in which case it is called *dalālat al-mafhūm*. If the implication is not integral to what the speaker is intending to get across, it is called *dalālat al-ishāra*.

In the hope of providing English terminology that will be at least somewhat suggestive of the precise nature of these four types of implication, I suggest the following designations:

1. Text-embedded implication (for *dalālat al-iqtidā'*).
2. Textually engendered implication (for *dalālat al-tanbih wa'l-īmā'*).
3. Construed implication (for *dalālat al-mafhūm*).
4. Nonintegral implication (for *dalālat al-ishāra*).

As Āmidī's explication-through-disjunction shows, the first three of these types of implication share the feature of being integral to what the speaker is intending to get across. The phrase "integral to what the speaker is intending to get across" is my attempt to get at the import of a single Arabic word, *maqsūd*. In speaking of the fourth type of implication as "not integral to what the speaker is intending to get across," we should probably not regard this type of implication as completely unintended. Indeed, to speak of any implication on the basis of which a mujtahid might propose to formulate the law as completely unintended by the Divine Legislator would no doubt be offensive to a medieval Muslim jurist. "Unintended" is virtually synonymous with "unwilled." In fact, the usual Arabic term for "intended" is *murād*, which definitely also carries the sense of "willed." Since Ash'arī theology affirms God's will to be sovereign, one can hardly speak of any implication that a text can be shown to carry as unwilled by God. What we are concerned with here is something less comprehensive than divine will or intention: a function of speech. Like any speech, the speech of the Divine Legislator has a message that it is seeking, through various devices embracing both ordered language and implication, to "get across" to an audience. Certain notions that a hearer might infer from the Legislator's speech could lie outside that message and yet be willed by the Legislator.

The four types of implication will become clearer through examples. “Text-embedded” implication, as already suggested, is implication that must be assumed in order to preserve the truthfulness of the speaker. Since both God and the Prophet are always truthful, any implication that is necessary for the preservation of their truthfulness must, as a matter of solemn duty, be presumed. For example, the Prophet’s saying, “Error and forgetfulness have been removed from my community” must be taken to mean that *blame and punishment* for error and forgetfulness have been removed from the community, since without this element of implied meaning the Prophet could not be regarded as truthful, given the actual occurrence of error and forgetfulness within his community. Quite obviously, what we are dealing with here is an ellipsis—one part of the statement has been suppressed on the assumption that the hearer will grasp the full meaning without it. The implied meaning thus amounts to a restitution of the full statement as it would have appeared had the speaker not opted for ellipsis.

“Textually engendered implication” may be illustrated by means of Qur’ān 5:38 (“As for the thief, both male and female, cut off their hands”), which in the Arabic original employs the conjunction *fa*: *wa’l-sāriq wa’l-sāriqa fa ‘qta’ū aydīyahumā*. The plain sense of *fa*, says Āmidī, is that the penalty of amputation is to follow the occurrence of theft immediately. From this sense it can be directly inferred that theft is the factor that occasions the penalty, such that whenever theft occurs the penalty is to be applied. Clearly, the implied meaning in this case follows directly from the explicit meaning of the passage. By describing the implication as textually engendered I mean that it is engendered by the explicit meaning of the text. As soon as one grasps the explicit meaning, one is carried immediately to the implied meaning; one needs to take nothing else into account.

“Construed implication” is implication that depends much more heavily upon the active participation of the addressee. Although it has a connection with the explicit meaning of a passage (all types of implication have some sort of connection with the explicit meaning), that connection is much less direct than in other types of implication that are integral to what the speaker is trying to get across. In construed implication, the explicit meaning alone is not sufficient to engender the implied meaning. Although the addressee must take it into account, he must also take into account something beyond the explicit meaning—the overall purpose (*maqsūd*, *fā’ida*) the speaker has in mind, the reason why he says what he says. The addressee must, in other words, realize that the speaker, in saying what he says, is trying to convey something beyond the explicit meaning of his words. This realization must come through reflection (*nazar*) upon the context. An example is

the Prophet's saying, "Alms-tax is due upon free-grazing sheep." From these words the addressee construes the implication that alms-tax is not due upon sheep that are not free-grazing (i.e., domesticated sheep). But this implication does not follow inexorably from the explicit meaning of the words. Rather, it requires reasoning on the part of the addressee to the effect that the speaker must have had some purpose for including the expression "free-grazing" in his statement, which could only have been that he wished to exclude sheep that were not free-grazing. There is thus a greater degree of uncertainty about this implication: it assigns a much greater role to the powers of discernment, the reasoning capabilities, of the addressee, since the addressee must, in addition to comprehending the explicit meaning, engage in a certain amount of reflection upon the drift of the speaker's words.

Finally, nonintegral implication may be illustrated by means of two Qur'ānic passages: "and the bearing of him and the weaning of him is thirty months" (46:15) and "and his weaning is in two years" (31:14). These passages, taken together, indicate that the smallest possible term for a full gestation is six months, for by subtracting the period of weaning (two years) from the period of gestation together with weaning (thirty months) we get six months as a possible period of gestation. This "meaning" can hardly be said to be integral to the message that the Divine Speaker was trying to get across to his audience in either passage. It is thus a kind of spinoff from the main drift of the two passages. This is not to say, however, that this meaning is not intended by the Legislator in the broader sense of "intended" noted above.

Of the fifty-six pages in the 1914 edition of the *Ihkām* that are devoted to implication, an overwhelmingly disproportionate number are devoted to construed implication: fifty-three pages. Āmidī thus hardly does more than tick off the other types of implication. One of these—textually engendered implication—is, however, treated at length elsewhere in the *Ihkām*, in the section on analogy (*qiyās*). Just how this type of implication is uniquely connected with analogy will be seen later on. As for the remaining two types of implication—text-embedded implication and nonintegral implication—Āmidī's brief treatment of them suggests that they did not have great practical importance for the enterprise of formulating the divine law. He does not record a single controversy for either one of them.

The Arabic phrase I am here translating as "construed implication" (*dalālat al-mafhūm*) means literally "the indicatory functioning of what is construed." Āmidī makes it clear that *mafhūm* means something more than "what is understood" in the ordinary sense: it is thus here a technical term. According to the formal definition he gives it, it means "that which is understood from

an expression without its being the meaning that the expression articulates.”³ It is, in other words, the implied meaning of the expression as opposed to its explicit meaning. Āmidī in this context refers to explicit meaning as *mantūq*, expressed. Occasionally the English word “understood” has this sense: one can, for example, speak of things that are not expressly stated as “understood by all.”

But Āmidī’s definition of *mafhūm*, while narrowing down its meaning, is still somewhat broad and does not seem to capture the specific sense it has in the phrase *dalālat al-mafhūm*. As he defines it, *mafhūm* embraces all implicit meaning. But as his explication-through-disjunction makes clear, the phrase *dalālat al-mafhūm* is intended to designate, not implication in general, but a certain type of implication. It is this type that I have designated “construed implication.” The key factor in construed implication is its dependence upon an awareness on the part of the addressee of the overall drift of the speaker’s words.⁴ It is an implication that does not, so to speak, leap out from the words the speaker uses; rather, the addressee must, by contemplating the overall purpose of the speaker, ferret it out from the speaker’s words.

Meanings that arise out of construed implication are, Āmidī tells us, divided into two types, for which the Arabic designations are *mafhūm al-muwāfaqa* and *mafhūm al-mukhālafa*. These may be called “what is understood by way of congruence” and “what is understood by way of opposition [*e contrario*].” For each of these a corresponding type of construed implication may be posited, which I shall call “congruent implication” and “counterimplication.” These may be illustrated by means of specific examples. The Qur’ān states, “Say not ‘Fie’ to them [your parents]” (17:23). The explicit meaning of this statement is that one is not to say “Fie” to one’s parents. If one reasons that if the Legislator does not wish us to say “Fie” to our parents then surely he does not wish us to do worse things to our parents (such as striking them) one has, as a result, an implied meaning. This meaning is fully consistent with the explicit meaning of the statement; it is, in fact, an outgrowth from, or expansion upon, that meaning. The implication carried by this statement belongs, accordingly, within the category of congruent implication. On the other hand, the Prophet’s saying, “Alms-tax is due upon free-grazing sheep,” presents us with a very different kind of implication. As we noted above, it implies—or is taken by some to imply—that alms-tax is *not* due upon sheep that are not free-grazing (i.e., domesticated sheep). This implied meaning represents the flip-side, or converse, of the explicit meaning of the statement. The implication that produces it belongs, accordingly, to the category of counterimplication: the statement implies what is counter to, or is the converse of, the explicit meaning.

Āmidī turns first to congruent implication,⁵ giving as examples the one given above plus the following three: (1) “Those who oppressively devour the wealth of orphans swallow fire into their bellies” (Qur’ān 4:10), the implied meaning of which is that it is forbidden to destroy the property of orphans; (2) “And whoever has done an atom’s weight of good will see it then, and whoever has done an atom’s weight of evil will see it then” (Qur’ān 99:7–8), the implied meaning of which is that those who do greater amounts of good or evil than an atom’s weight will likewise be confronted with their deeds on the Day of Reckoning; (3) “Among the People of the Scripture there is he who, if you trust him with a weight of treasure, will return it to you. And among them there is he who, if you trust him with a piece of gold, will not return it to you unless you keep standing over him” (Qur’ān 3:75), the implied meaning of which is that the one who will return a weight of treasure (*qintār*, a very large unit of measurement often compared with the ton) will likewise return *less* than a weight and the one who will not return a mere piece of gold (*dinar*) will likewise not return *more* than a single piece of gold.

The above instances of congruent implication all fall, Āmidī notes, under the heading either of “hinting at the higher by means of the lower” (*al-tanbīh bi’l-adnā ‘ala ‘l-a‘lā*, clearly equivalent to *a minori ad maius*) or of “hinting at the lower by means of the higher” (*al-tanbīh bi’l-a‘lā ‘ala ‘l-adnā*, clearly equivalent to *a maiori ad minus*).⁶ Both together may be termed a *fortiori* implication. Āmidī mentions no instances that do not fall under one of these two headings, giving the impression that the category of congruent implication consists entirely of these two types of “hinting,” such that congruent implication seems to be tantamount to a *fortiori* implication. Both types have great importance for the formulation of the law. Clearly, all four Qur’ānic passages are potentially indicative of rules of law. If one takes the *if‘al* form in “Say not ‘Fie’ to them” to be indicative of forbiddenness, then one has a rule of law that forbids people to say “Fie” to their parents. If one accepts the notion of hinting at the higher by means of the lower, then one is able to extrapolate from this verse a rule of law that forbids people to strike their parents.

But this type of implication requires that something more be taken into account than the explicit meaning of the passage in question. It does not, in other words, occur solely by virtue of the explicit meaning. One cannot infer solely from the explicit meaning of “Say not ‘Fie’ to them” that it is forbidden to strike one’s parents. The explicit meaning plays a role in the implication of this further rule, but something else is also involved—consideration of the purpose underlying the explicit meaning, that which the speaker is really intending to accomplish by saying what he says. If we are to contend that “Say not ‘Fie’ to them” implies that it is forbidden to strike one’s parents,

we must be able to claim that the speaker, in uttering these words, intends to prevent harm to parents. This we cannot do on the basis of the words alone: we depend upon the context. Once we are prepared to affirm, on the basis of contextual indicators, that the speaker of these words does indeed intend to prevent harm to parents, the *a fortiori* implication becomes irresistible.

That the forbiddenness of striking parents does not follow from the explicit meaning of "Say not 'Fie' to them" alone can be demonstrated from a hypothetical situation in which a king, reacting to an attempted revolt against his kingship incited by his own father, commands his executioner to kill his father. If the king at the same time said to his executioner, "Say not 'Fie' to my father," the executioner would not be able to claim from these words alone that he should not kill the king's father, for the king could very well have some other purpose in mind in saying these words than preventing harm to his father. He could, for example, be intending that the executioner, in carrying out his dreadful order of execution, show respect for the father in the last moments of his life. The purpose of preventing harm to his father would not be present in his thinking at all; rather, such a purpose would be ruled out by another purpose—avoiding the calamity of a revolt against his kingship.

Āmidī tells us that all scholars, except for Dāwūd al-Zāhirī and his school, have agreed that both "hinting at the higher by means of the lower" and "hinting at the lower by means of the higher" are valid bases upon which to formulate the divine law. Their validity can be demonstrated as follows. When a master says to his slave, "Do not give Zayd a grain," or "Do not say 'Fie' to him," or "Do not frown at him," one understands quite readily that what the master is forbidding also includes giving Zayd what exceeds a grain, striking Zayd, and verbally insulting Zayd. If the slave gives Zayd an entire loaf of bread, for example, he will be regarded as having disobeyed the master's order and as deserving of punishment. The slave, in other words, should have understood that "Do not give Zayd a grain" meant that he was not to give Zayd a loaf, since he should have understood from contextual indicators that the master's purpose in saying these words was to prevent generosity from being accorded to Zayd. Similarly, one understands immediately from the Prophet's saying, "Bring thread and needle," that one is to bring baggage and money and the like, and from his saying, "Whoever steals the stick of a Muslim must return it," that what exceeds a stick must also be returned because in both instances one is able to grasp the Prophet's purpose in saying what he says.

Despite the widespread agreement on this way of thinking, Muslim jurists were not in agreement as to how "hinting at the higher by means of the lower" and "hinting at the lower by means of the higher" were to be conceptualized. Āmidī presents these two types of "hinting" to us under the

heading of implication (*dalālat ghayr al-manzūm*), and it is for that reason that they emerge in the present chapter of this book. Many jurists shared his approach. However, for others these types of “hinting” entailed more than sheer implication: they belonged properly under the heading of “indication through analogy” (*al-dalāla al-qiyāsiya*). The subject of indication of the divine law through analogy will be explored fully in a later chapter. Here the point to be noted is that indication through analogy, like “hinting at the higher by means of the lower” and “hinting at the lower by means of the higher,” entails consideration of a purpose behind the explicit meaning of a text. The classic example of indication through analogy in the literature of Muslim jurisprudence is the Qur’anic prohibition against grape-wine (*khamr*). The Qur’an explicitly forbids grape-wine by labeling it as sinful (2:219) and as a device of Satan intended to spread forgetfulness of God (5:90–91). In making such statements about grape-wine the Legislator, say a great many jurists, indicates to us that date-wine is also forbidden by virtue of its being analogous to grape-wine. The analogy, it is argued, obtains by virtue of a purpose underlying the prohibition against grape-wine that is served by a similar prohibition against date-wine—to safeguard human rationality, upon which the proper worship of God, not to mention proper conduct of worldly affairs, depends.

All jurists who accept the notion of indication through analogy agree that when the Legislator indicates to us a rule of law through analogy he is *not* indicating the law through words. Indication through analogy, in other words, transcends indication through words, while remaining dependent upon it. Whatever rule of law may emerge out of an indication through analogy cannot be regarded as contained within the meaning of the texts. It must rather be regarded as transcending that meaning. The ramifications of this way of thinking for those types of indication of the divine law labeled as “hinting at the higher by means of the lower” and “hinting at the lower by means of the higher” are clear. If one subsumes these modes of indication of the divine law under the heading of indication through analogy, one is in fact placing the rule of law that emerges from them outside the domain of the meaning of the texts. Thus in the case of “Say not ‘Fie’ to them,” when a mujtahid establishes on the basis of these words a rule forbidding people to say “Fie” to their parents (an effort that requires that the mujtahid have some contextual grounds for maintaining that the *if’al* form signifies a forbidding) he is remaining within the meaning of the texts; but when he establishes on the basis of these same words a rule forbidding people to strike their parents he is moving beyond the meaning of the texts. On the other hand, if one subsumes these modes of indication under the heading of implication, then one

is keeping rules that emerge from them, such as the rule forbidding people to strike their parents, *within* the meaning of the texts.

There are clearly two different views here as to how far the meaning of the text may be stretched. Those who subsume these modes of indication under the heading of implication are obviously opting for an expansive view of what constitutes the meaning of the text, whereas those who subsume these modes of indication under the heading of indication through analogy are opting for a restrictive view. Whether one adopts an expansive view or a restricted view has little practical importance if one accepts both implication and indication through analogy; the difference between the two views becomes largely terminological, with no substantive effect, since the rule that results from the mujtahid's efforts is valid in either case. On the other hand, if one accepts congruent implication (as defined above) as a valid basis upon which to formulate the law but rejects indication through analogy, then the view one takes will have definite substantive effect. However, Āmidī gives us no indication that there were any Muslim jurists who assumed this stance.

It is interesting that the school that is famed for its rejection of indication through analogy—that of Dāwūd al-Zāhirī and his followers—is said by Āmidī to have rejected altogether both “hinting at the higher through the lower” and “hinting at the lower through the higher.” Āmidī does not tell us whether or not Dāwūd and his followers subsumed these modes of indication under indication through analogy. If they did, their rejection of them is but an aspect of their general rejection of indication through analogy. If they did not, then we must conclude that they rejected the notion of a type of implication that entailed consideration of something other than the explicit meaning of the particular passage under consideration, namely, the speaker's purpose. Perhaps we are to understand Dāwūd and his followers as having simply rejected the two modes of implication without interesting themselves in the issue of whether they belonged under the heading of implication or of indication through analogy. It stands to reason, given what we know about the Zāhirī school, especially from the work of Goldziher, that the adherents of this school, while rejecting indication through analogy, should also have rejected implication that depended upon a consideration of something beyond the explicit meaning of a text.

Āmidī joins the company of those jurists who placed “hinting at the higher by means of the lower” and “hinting at the lower by means of the higher” under the heading of implication and subsumed rules resulting from them within the domain of the text's meaning. Everyone agrees, he argues, that it is not a requirement of indication through analogy that the governing consideration (for example, the concern to promote rationality) pertain

to the derivative (date-wine) in even greater measure than it pertains to the antecedent (grape-wine). But such a requirement does obtain in the case of the two modes of indication presently under consideration. Now, if these two modes of indication belonged under the heading of indication through analogy, they could not be subject to a requirement that does not pertain to indication through analogy. Furthermore, it is also agreed that the antecedent need not, in the case of indication through analogy, be included within the derivative, for in that case the forbiddenness of grape-wine (which is obviously not included within date-wine) would not be a valid basis upon which to declare date-wine to be forbidden. But the two modes of indication under consideration are subject to this requirement. For example, when a master says to his slave, "Do not give Zayd a grain," it is understood that the slave is not to give Zayd larger amounts *inclusive of the single grain*. All the more reason, therefore, not to subsume these two modes of indication under the heading of indication through analogy.

Counterimplication, as I have said, is the implication of a meaning that represents the converse of an explicit meaning.⁷ This type of construed implication takes up even more space in Āmidī's discussion than does congruent implication (forty-seven pages in the 1914 edition of the *Ihkām* as against seven pages). This is partly due to the fact that it provoked a greater amount of controversy among Muslim jurists than did congruent implication. Aside from the Zāhirī school, all Muslim jurists accepted "hinting at the higher by means of the lower" and "hinting at the lower by means of the higher" as productive of valid rules of law, disagreeing only on what to call these modes of indication. Counterimplication, on the other hand, was not so widely regarded as productive of valid law. Furthermore, it no doubt had greater practical importance for the formulation of law in the sense of being more frequently relevant to that enterprise. There are, we may safely assume, far more texts that lend themselves to a supposition of counterimplication than there are texts that lend themselves to a supposition of congruent implication. That this is so seems fairly obvious from the following list of ten different types of counterimplication, which Āmidī supplies:⁸

1. Counterimplication construed from the juxtaposition of a general expression and a restrictive adjective. The example given above, the Prophet's saying, "Alms-tax is due upon free-grazing sheep," is of this type. The implied meaning is that alms-tax is not due upon sheep that are not free-grazing.
2. Counterimplication construed from a conditional statement. For example, "And if they are with child, then spend for them till they

- bring forth" (Qur'ān 65:6), the implied meaning of which is that if the women are not with child there is no obligation to spend for them.
3. Counterimplication construed from a time limit. For example, "... then she is not lawful for him thereafter until she has wedded another husband" (Qur'ān 2:230), the implied meaning of which is that the woman is lawful unto the man after she has wedded (and divorced) another husband. Other examples are: "Fight against such of those who have been given the Scripture as believe not ...until they pay the tribute readily" (Qur'ān 9:29) and "...go not in unto them until they are cleansed" (Qur'ān 2:222).
 4. Counterimplication construed from "only" (*innamā*). For example, the Prophet's saying, "Works take place only through intentions," the implied meaning of which is that without intentions there are no true works. Other examples are: "Usury pertains only to credit," "Clientage is only for the one who has been set free," "Preemption applies only to what is not divisible."
 5. Counterimplication construed from restrictive attributes that appear without mention of a general expression. For example, the Prophet's saying, "The widowed is more entitled to her own life than her guardian," the implied meaning of which is that the nonwidowed is less entitled to her own life than her guardian. Another example is a version of a previously cited saying of the Prophet in which the noun "sheep" is omitted: "Alms-tax is due upon the free-roaming." This type of counterimplication is, of course, scarcely distinguishable from the first in Āmidī's list (see above).
 6. Counterimplication construed from a proper name. If, for example, someone says, "Give this to Zayd," it is understood that one is not to give the object in question to any other.
 7. Counterimplication construed from a derived noun signifying a genus. For example, the Prophet's saying, "Do not buy food [*ta'ām* in Arabic: a derived noun] with food," the implied meaning of which is that one may buy things other than food with their like. This is similar to the sixth type in that *ta'ām* is the name of a genus.
 8. Counterimplication construed from an exception. For example, if someone says, "There is no scholar in the town except Zayd," it is understood that there is a scholar in the town, namely, Zayd.
 9. Counterimplication construed from the restriction of a rule of law to a specific number. For example, from the rule that prescribes the punishment for slander as eighty lashes one understands that the number of lashes is not to be other than eighty.

10. Counterimplication construed from the delimitation of the subject of a sentence by means of the predicate. For example, if someone says, "The scholar is Zayd," it is understood that the scholar in question is not anyone other than Zayd.

All these types of counterimplication, observes Āmidī, depend upon a degree of reflection on the part of the addressee upon the reason (*fā'ida*) why a speaker mentions something (e.g., free-grazing sheep) but not something else (e.g., sheep that are not free-grazing).⁹ It is this dependency that justifies the inclusion of counterimplication, along with congruent implication, within the category of construed implication. We have already noted that in the case of congruent implication (i.e., "hinting at the higher by means of the lower" and "hinting at the lower by means of the higher") the addressee must be aware of a purpose such as the prevention of harm to parents, which, as we have noted, is commonly attributed to the Qur'ānic phrase, "Say not 'Fie' to them." Āmidī now describes the deliberations on the part of the addressee that are required in congruent implication in somewhat different terms. The addressee must reflect upon the reason why the speaker mentions one thing (e.g., saying "Fie" to one's parents) and not another (e.g., striking one's parents). The reason in the case of congruent implication, says Āmidī, is that the speaker wishes to give added emphasis (*ta'kid*) to the *unmentioned* case (*al-maskūt 'anhu*). Thus the Legislator, in stating that people are not to say "Fie" to their parents, is really intending to underscore the forbiddenness of acts that are even more harmful to parents. If he were to say explicitly that people are not to strike their parents or inflict other kinds of harm upon them, he would not underscore his point as effectively.

With the various types of counterimplication mentioned above, the reflective thinking of the addressee takes a different form. He must come to the realization that the reason why the speaker mentions one thing (e.g., free-grazing sheep) but not another (e.g., sheep that are not free-grazing) is that he wishes to negate with respect to the former what he explicitly affirms with respect to the latter. The addressee must, in other words, have reason to think that the speaker has consciously taken into consideration the converse of the explicit meaning of his words and intends that it be part of his overall meaning.

Āmidī records controversies over nine issues having to do with the notion of counterimplication. Eight of these revolve around a single issue: whether counterimplication is a valid basis upon which to formulate the divine law. The ninth belongs by itself and will be considered at the end of the chapter. Those who maintain that counterimplication is not a valid basis upon which to formulate the divine law—and Āmidī counts himself among them—take the approach, generally speaking, of denying validity to the very notion of

counterimplication. This denial forms a central argument that applies to most of the types of counterimplication in Āmidī's list. However, since each of these types raises considerations unique to itself, Āmidī treats each separately, except that he lumps the first and the fifth types together and the sixth and the seventh types together. Thus, in place of a single issue, we are presented with eight separate issues, with a slightly different order of presentation. The first of these eight issues pertains to the first of the ten types of counterimplication listed above and, by implication, to the fifth as well; the second pertains to the second type; the third to the third type; the fourth to the ninth type; the fifth to the sixth and seventh types; the sixth to the fourth type; the seventh to the tenth type; and the eighth to the eighth type.

Āmidī's account of the dialectic over the first issue,¹⁰ which pertains to counterimplication construed from the juxtaposition of a general expression and a restrictive attribute (the first of his ten types of counterimplication), is the longest owing to the fact that he devotes a great many pages to a critique of specious arguments against the propriety of reliance upon this type of counterimplication before turning to arguments he regards as sound. Furthermore, since he regards these latter arguments as applicable to all but two (the fourth and the eighth) of the other types of counterimplication in his list, he is able in his subsequent discussions either to recapitulate the arguments in briefer and slightly altered form,¹¹ or to refer his reader back to his original statement of them,¹² thereby abbreviating the subsequent discussions considerably.

I shall first consider the arguments that Āmidī regards as applicable to all but two of the types of counterimplication and shall thereafter turn to arguments and considerations that pertain uniquely to particular types.

The arguments having the broader application are two in number. The first argument runs as follows. In statements such as "Alms-tax is due upon free-grazing sheep," "And if they are with child, then spend for them," "And she is not lawful unto him thereafter until she hath wedded another husband," and "Do not buy food with food," a rule of law has been connected with something (an attribute, a condition, a time limit, or a genus). Now, if we say that by connecting the rule of law with that thing the statement is implicitly declaring the rule to be inoperative in the absence of that thing, we are in effect committing ourselves to the position that the rule cannot be operative when the thing is absent, since this operation of the rule would be in conflict with a textual indicator. Āmidī seems to be saying that a statement such as "Alms-tax is due upon free-grazing sheep" connects a rule requiring that alms-tax be paid on one's sheep with the attribute of being free-grazing. If we take this connection—which is a matter of simple verbal juxtaposition—to

mean that the statement is *implicitly* declaring the rule to be inoperative whenever the attribute of being free-grazing is absent, then if we regard the statement as a genuine indicator of the divine law we are bound to regard the rule as indeed inoperative whenever the attribute of being free-grazing is absent. In other words, we are obliged to rule out the possibility that the Legislator might require that alms-tax be paid on sheep that are not free-grazing. Similarly, in the case of "And if they are with child, then spend for them" we are bound to regard the rule that requires that maintenance be provided for divorced women who are yet in the period of unavailability for remarriage as inoperative in the event that a women is not pregnant. The same can be said of other similar passages.

The problem with this way of thinking, continues the argument, is that it flies in the face of what we actually observe to be the case with respect to many passages of this sort. For example, the Qur'ān says, "Slay not your children, fearing a fall to poverty" (17:31), thus connecting a rule that forbids the slaying of children with the attribute or condition of fear that maintaining the children will result in poverty. No one would presume to say, on the basis of this passage, that the rule forbidding the slaying of children is inoperative in the absence of such fear. To the contrary, the rule continues to be operative. This being the case, we must conclude that the passage, by connecting a rule with a certain attribute, does not by implication limit the operation of that rule to situations where the attribute is present. Likewise, no one would presume to say, on the basis of "do not devour it [i.e., the property of orphans] by squandering and in haste" (Qur'ān 4:6), that the rule forbidding the appropriation of orphans' property is inoperative when the appropriation is done in a nonsquandering and deliberate manner. Similarly, the Qur'ān says, "...it is no sin for you to curtail [your] worship if you fear that those who disbelieve may attack you" (4:101). No scholar would try to argue that because of this verse the rule that permits curtailment of worship (i.e., the *salāh*-prayer) is inoperative whenever the condition of fearing attack from unbelievers does not obtain, since there are other situations in which worship may be curtailed. Āmidī suggests that many other similar instances could be given to show that rules are operative even when the attributes, conditions, time limits, etc., mentioned in the relevant passages are absent or have not been realized.

Āmidī's way of stating this argument suggests that the thing to which the rule is connected is extraneous to the rule. That is, he seems to be saying that a statement such as "Alms-tax is due upon free-grazing sheep" connects a rule (presumably, "Alms-tax is due upon sheep") with something extraneous to the rule ("free-grazing"). If we wish to include "free-grazing" in the rule, we may restate his argument as follows. To say that the statement "Alms-tax is

due upon free-grazing sheep” implies that alms-tax is not due upon sheep that are not free-grazing is tantamount to saying that this statement *disallows* any rule that would make alms-tax due upon stall-fed sheep, for example. But we know from the examples given above that statements of this sort do not in fact disallow such rules.

The point of this argument is simple. If we accept counterimplication as a valid basis upon which to formulate the law, we limit the operation of rules (or limit the range of possible rules) in an unjustifiable manner, inconsistent with what is actually the case. Therefore, counterimplication must be dropped from the list of valid indicators of the divine law. Counterimplication, in other words, is not a viable concept: the statement “Alms-tax is due upon free-grazing sheep” does *not* imply that alms-tax is not due upon sheep that are not free-grazing.

Against this first argument the adversaries raise a number of objections, of which I shall mention only a few. Why cannot it be said that the counterimplication of a passage functions as an indicator of the divine law only when there is no other indicator supporting a rule that is in conflict with it and that when there is such an indicator then the counterimplication must be set aside? This query takes us in the enterprise of weighing conflicting indicators, a subject we shall consider at length later. Here the point to be noted is that the weighing of indicators presupposes that indicators are not always equal in strength and that when a stronger indicator is in conflict with a weaker indicator preference must be given to the stronger. The adversary is thus suggesting that counterimplication be treated as weak in comparison with indicators that point to an opposing rule and that it be given consideration only when such indicators are lacking. Āmidī’s reply: This approach violates the principle that the law must be presumed to be harmonious and that conflict should be recognized only where there is proof strong enough to overrule this presumption (a principle to which we shall return in our later discussion). The notion of counterimplication unjustifiably proliferates conflict of indicators.

But, continues the adversary, must we not say of a true condition that the absence (i.e., nonrealization) of the condition *necessitates* the absence of that of which it is a condition. If the phrase “if they are with child” in “And if they are with child, then spend for them” expresses a true condition (as the grammarians say it does), then does this not mean that if the condition (pregnancy) is absent the thing of which it is a condition (the duty of providing maintenance) will necessarily also be absent? Āmidī’s reply is that a condition need not be understood in this strict sense. Although there are instances in which the absence of the condition can be correlated with the absence

of the thing of which it is a condition, there are plenty of other instances in which this is not the case. He is saying in effect that a condition need not be of the type expressed in modern logic by the phrase "if and only if" in order to be a true condition.

But what about the time limit? Is it not true that the word "until" (*hattā, ilā*) is indicative of a *terminus ad quem*? Does not the word "until" in "Fight against such of those who have been given the Scripture as believe not . . . until they pay the tribute readily" (Qur'an 9:29) indicate that the rule requiring warfare against people in possession of the Scripture ceases to be operative when those people pay the tribute readily? If we said that the rule continues to be operative after tribute has been paid, would we not be transforming the limit expressed by "until" into something other than a true terminal point, into a middle point, thus violating the true sense of "until"? To this Āmidī replies that "until" does indeed indicate the *terminus ad quem* of the rule. However, the fact that the rule may be operative after the time limit has passed does not make the time limit a middle point, since the rule would be operative by virtue of a subsequent indicator, not by virtue of the original one (i.e., the passage quoted). The time limit is a *terminus ad quem* within the terms of the original indicator; that indicator informs us that the rule is operative up to a given point. The original indicator does not, however, itself indicate whether the rule remains operative after that point or not.

The second main argument against the notion of counterimplication spreads its net somewhat more widely than the previous argument, treating the notion of counterimplication as one of several equally invalid ways of establishing a negative converse to a rule contained within the explicit meaning of a text. The argument proceeds as follows. If a statement that connects a rule of law with an attribute (or condition, or time limit, or whatever) is to be taken to indicate that the rule of law is not operative when the attribute is absent, then one must be able to say *in what way* the statement indicates that this is so. The alternatives to be considered are as follows. Either the statement conveys this information to us through its explicit meaning, or it conveys it to us by virtue of an awareness on our part that the speaker must have had some reason for connecting the rule with the attribute, which could only have been that he wished to let us know that the rule is inoperative when the attribute is absent, or it conveys the information to us in some other way. Clearly, the first alternative is out of the question: no scholar would claim that the saying "Alms-tax is due upon free-grazing sheep" declares as part of its explicit meaning that alms-tax is not due upon sheep that are not free-grazing.

The second alternative is also out of the question. In explaining why this is so, Āmidī comes to the heart of his argument, for this alternative represents

the rationale behind the notion of counterimplication as developed by the majority of its advocates. We have noted that counterimplication depends on a kind of reasoning on the part of the addressee. He must reason to himself that the speaker, in saying, for example, "Alms-tax is due upon free-grazing sheep," must have had some reason for mentioning free-grazing sheep in particular and not mentioning sheep that are not free-grazing and that that reason could only have been that he wished to affirm something about free-grazing sheep and to exclude all other sheep from what was affirmed. This reasoning that the addressee is presumed to engage in is itself a potential argument for reliance upon counterimplication. It proceeds from a principle stressed in an earlier chapter—the rationality and proper use of the *Lugha*. A rational speaker must have a reason for saying everything he says, for uttering every word that comes from his mouth; that is to say, there must be something he is trying to communicate to his audience. Speaking that does not serve the purpose of communication is irrational; it is senseless babble. Since the Divine Legislator is consistently rational, such senseless speech may never be attributed to him. Consequently, if he mentions an attribute such as "free-grazing" or a condition such as "if they are with child" or a time limit such as "until she has wedded another husband" or employs any of the forms associated with counterimplication, we must assume that he had a reason for doing so. Had he not intended to limit the rule making alms-tax due upon sheep to free-grazing sheep such that it would be inoperative in relation to all other sheep, he would not have employed the expression "free-grazing": to do so would have been counter to his purpose, impeding communication and rendering his speech senseless and irrational.

Āmidī is not convinced by this argument. "Alms-tax is due upon free-grazing sheep" need not mean that alms-tax is not due upon other sheep in order to make sense. It could make perfect sense for other reasons. For example, it could be that someone had questioned the Prophet regarding free-grazing sheep in particular. One can well imagine that a person who was certain that alms-tax was due upon stall-fed sheep came to the Prophet to ask whether the tax was also due upon free-grazing sheep. In this context the Prophet's remark serves to clarify a particular point, not to make a statement regarding sheep in general or stall-fed sheep in particular. Or one can imagine that the Prophet was addressing a tribe that possessed only free-grazing sheep, in which case stall-fed sheep would not enter into the picture at all.

Thus the second alternative—and with it one of the arguments of the advocates of the notion of counterimplication—is demolished. Then, says Āmidī, there must be some other way of explaining why statements that connect a rule with an attribute (or condition, or time limit, or whatever)

indicate that the rule is inoperative when the attribute is absent. Unless the adversary can come up with some other way, we must presume that no other way exists. This part of the argument, of course, presupposes that the adversary has not found another way.

Having presented the case against counterimplication, Āmidi must consider the case for it and demonstrate its fallaciousness. One of the arguments employed by the advocates of counterimplication—that relating to the principle of rationality—has just been considered. We may now turn to other arguments. I shall here again single out only a few representative arguments for consideration. Each of these arguments, as will quickly be seen, relates to a particular type of counterimplication, although in some cases a wider application will appear possible.

1. When Qur'an 9:80 ("Ask forgiveness for them, or ask not forgiveness for them; though you ask forgiveness for them seventy times God will not forgive them") was revealed, the Prophet said, "By God, I will [ask forgiveness] more than seventy times." This shows that the Prophet considered that what pertained to the asking of forgiveness more than seventy times was the opposite of what pertained to the asking of forgiveness seventy times—that God would forgive if the Prophet asked for forgiveness more than seventy times. Reply: it is possible that the Prophet said what he did, not because he believed that God would forgive when asked more than seventy times, but in order to achieve a certain effect upon his audience, swaying their hearts in the direction of a commitment to true religion.

2. Ibn 'Abbās interpreted Qur'an 4:177 ("If a man die childless and he have a sister, hers is half the heritage") to mean that if the deceased has a surviving child, the sister does not receive this inheritance; and Ibn 'Abbās was, among his generation, one of the best versed in the Arabic language. Reply: it is possible that Ibn 'Abbās denied the right of inheritance to the sister in cases where the deceased had a surviving child, not on the basis of a counterimplication of this verse, but on the basis of the principle that a right must be presumed not to exist unless its existence can be demonstrated.

3. 'Umar ibn al-Khattāb and Ya'lā ibn Umayya took Qur'an 4:101 ("...it is no sin for you to curtail worship if you fear that those who disbelieve may attack you") to mean that when fear of attack is not present the worship is not to be curtailed. Like Ibn 'Abbās, they were well versed in the Arabic language. (It may be noted that this and the previous two arguments appeal to the authority of persons believed to have been well versed in Arabic usage and thus not likely to construe from words what should not be construed.) Reply: 'Umar and Ya'lā interpreted this verse as they did, not on the basis of a counterimplication, but on the basis of the principle that a rule of law

remains as it is through time unless something intervenes to alter it. Thus the forbiddenness of curtailing worship remains as it is when fear of attack does not intervene to alter it.

4. If someone says to his agent, "Buy me a black slave," it is understood that the agent is not to buy a white slave. Reply: one assumes that the agent is not to buy a white slave on the grounds, not of a counterimplication, but of the principle that something (such as a duty to make a certain purchase) is presumed not to exist unless its existence can be demonstrated.

5. If a master says to his slave, "Chastise Zayd until he repents," and his words do not indicate that the slave is not to chastise Zayd after he has repented, then it would be appropriate for the slave to ask, "Am I to chastise Zayd after he repents?" But we know that such questions are not proper. This shows that the charge is inoperative after the time limit has passed. Reply: it is, to the contrary, quite proper to ask such questions, since the master's words do not indicate whether or not the charge is operative after the time limit has passed.

The fourth and the eighth types of counterimplication in Āmidī's list of ten types—that is to say, the counterimplication construed from "only" and the counterimplication construed from "except"—stand, as I have noted, in a class by themselves, requiring special treatment. In order to make sense of the controversy over counterimplication construed from "only,"¹³ we must bear in mind that the Arabic term at issue, *innamā*, does not necessarily carry the sense of "only"; it does not, in other words, necessarily signify confinement (*ḥasr*) to a particular case or attribute. Accordingly, we find that the controversy revolves around the question of what constitutes the apparent (*zāhir*) meaning of *innamā*.

Some jurists maintained that "only" is indeed its apparent (i.e., its sole literal) meaning. Thus the apparent meaning of *innamā ana basharun mithlukum* (Qur'ān 18:111) is that the one speaking (the Prophet) is *nothing but* a mortal, is confined to being a mortal; we are justified, in other words, in translating this sentence as "I am only a mortal like you." Occasionally, these jurists admitted, *innamā* does not have this sense. For example, in the Prophet's statement *innamā 'l-ribā fi 'l-nasī'a* the word *innamā* by general agreement serves to give added emphasis (*ta'kid*) to the assertion: it should, in other words, be translated as "On the contrary, usury *is* present in the *nasī'a* transaction" ("on the contrary" being appropriate in situations in which the assertion has been denied or doubted and needs to be made with special emphasis; *is* is italicized in order to show the resulting increase of emphasis). But in such cases, according to these jurists, *innamā* may be said to be used in a meaning other than its apparent meaning. Jurists who took

this viewpoint could then argue that the apparent meaning (that is to say, the meaning we presume to be the intended meaning in the absence of an indicator to the contrary) of *innamā*, namely, “only,” has a converse that we may treat as a counterimplication upon which the formulation of the law may be based. The addressee, in this view, has reason to reflect upon why the speaker employs *innamā*. Surely the Prophet in declaring, “Actions are [valid] only through intentions,” would not have employed “only” if he did not mean to imply that actions that are not accompanied by intentions are invalid. The rationality of the Prophet’s speech thus becomes a crucial consideration.

Those jurists who denied that *innamā* carries a counterimplication that may serve as a basis for the formulation of the law, had they also regarded “only” as the apparent meaning of the word, would then have had to employ arguments like those we have been considering to support their position. However, Āmidī makes it clear that many of them, if not all, had a very different view of the apparent meaning of *innamā*: they regarded “on the contrary” (or “rather”; there are various ways to render this sense of the word in English) as the apparent meaning. But not only this: they regarded “on the contrary” as the only meaning that *innamā* ever has, excluding “only” even as a possible nonliteral meaning to which the word might on occasion be diverted. How, then, did they deal with statements like *innamā ana basharun mithlukum*? Is it not the case that the Prophet (the speaker in this statement) is *only* a mortal like his fellow human beings? Yes, this is the case; but, says Āmidī, it is something we learn from other indicators, not from this statement itself. The meaning of the statement, taking by itself, is: “On the contrary, I am a mortal like you.” Since *innamā* never means “only,” the prospect of its having a counterimplication that might serve as a basis for the formulation of the law is demolished.

In his discussion of implication construed from “except,”¹⁴ Āmidī refers his reader back to an earlier section of the *Ihkām*, in which the exceptive phrase was considered as one of a number of “attached” indicators of specific reference.¹⁵ In the earlier discussion, Āmidī noted that he and his fellow-schoolmen took the position that statements that are negative in form are, when they contain exceptive phrases, really affirmative. When one says, for example, “There is no scholar in the town except Zayd,” one is really saying that Zayd is the only scholar in the town: this, Āmidī seems to be saying, is the explicit meaning of the statement, and there is no justification, therefore, for reducing it to a counterimplication. The Lughā provides this form of affirmation in order to enable a speaker to get across a point (e.g., Zayd’s excellence as a scholar) more effectively. When a member of the linguistic community (*sāmiʿ lughawī*) hears the statement “There is no scholar in the town except Zayd,” he immediately

grasps its affirmative sense. Furthermore, the statement “There is no god but God,” is universally considered by Muslims to be the ultimate affirmation of God’s existence and unity.

The ninth issue is really no issue at all,¹⁶ since it did not bring opposing parties into confrontation. The question is whether one may construe a counterimplication in cases where the thing explicitly mentioned in the text under consideration is mentioned on account of its being generally (but not necessarily always) true. For example, in the Prophet’s saying, “Whenever a woman gives herself in marriage without her guardian’s consent, her marriage is null and void,” the phrase “without her guardian’s consent” is included because it is generally the case, when a woman gives herself in marriage, that she does so without her guardian’s consent. In such cases, a counterimplication is not, by general agreement, construable. One cannot, in other words, infer that, if a woman gives herself in marriage and her guardian does not object, her marriage is in that case valid. Accordingly, as we consider the controversies over the validity of counterimplication, we must bear in mind that they have to do with cases in which what is explicitly mentioned is not mentioned on account of its being generally true.

ABROGATION

Chapters 7 through 10 have dealt with matters that pertain to the indicatory functioning of all three types of authoritative texts: Qur'ānic, Sunnaic, and Ijmā'ic (the last consisting, for Āmidī, mainly of Āthāric texts). In this chapter we turn to a subject that pertains, in the thinking of Āmidī and most Muslim jurists, to the indicatory functioning of Qur'ānic and Sunnaic texts alone, to the exclusion of Ijmā'ic texts. That subject is abrogation. As we shall see, a few jurists regarded this subject, too, as pertaining to all three types of texts.

The real object of an abrogation is, of course, a rule of law (or other type of divine categorization of a human act), not a text as such. But since, according to the majority view, only rules contained within the meaning of Qur'ānic and Sunnaic texts may abrogate or be abrogated, abrogation remains very much an intertextual phenomenon. We are still dealing with a type of impingement of one text upon another.

As with most technical terms employed by Muslim jurists, “abrogation” (*naskh*) is variously defined. Āmidī critiques a number of definitions before turning to one that he finds acceptable, that of Bāqillānī, which was also espoused by Ghazālī.¹ According to Bāqillānī, abrogation is “addressed speech of the Legislator that indicates that a rule of law established by earlier addressed speech has become inoperative and does so in such a manner that, were it not for the later addressed speech, the rule would continue to be operative.” Āmidī explains that this definition embraces four components, all of which constitute exclusions. “Addressed speech” excludes other things that may indicate that a rule of law has become inoperative, such as death, sickness, mental incapacity, and so on. “Established by earlier addressed speech” excludes from consideration rules established by the human reason apart from revelation: such rules are invalid from the beginning and cannot, therefore, be subject to abrogation. “In such a manner that, were it not for the later addressed speech, the rule would continue to

be operative” excludes from consideration rules that would become inoperative in any case because of their having been originally presented as operative within a fixed time-span. “Earlier addressed speech” abbreviates the Arabic original, which describes the speech in question both as *preceding* the other speech and as being *remote* from it, that is to say, as being unattached to it in the manner of an appendage. It thus excludes speech that is in any way syntactically tied to the other speech.

Āmidī goes to considerable lengths to defend this definition of abrogation against various criticisms leveled against it but nonetheless gives us, in the end, a definition of his own making, which, he tells us, contains all truly essential exclusions while employing fewer words. Abrogation, according to this more parsimonious definition, is “addressed speech of the Legislator that obstructs the continuing operation of a rule established by means of preceding speech.”²

It may be noted that these definitions contain no phrase that limits abrogation to the sphere of Qur’ānic and Sunnaic texts. The phrase “addressed speech of the Legislator” does not in and of itself necessarily entail such a limitation. *All* rules of law are representative of the addressed speech of the Legislator. That this is so is evident from the definition of *hukm* considered in chapter 2 of Part I of this book.³ For those jurists (such as Āmidī) who accepted the idea that valid rules of law may be established by an Ijmā’ic consensus or on the basis of analogies discerned by individual mujtahids, this could only mean that the addressed speech of the Legislator was not limited to words found in Qur’ānic and Sunnaic texts. Thus Bāqillānī’s and Āmidī’s definitions of abrogation leave open the question of exactly what, within the domain of the addressed speech of the Legislator, may and what may not abrogate or be abrogated.

As for the related terms “abrogator” (*al-nāsikh*) and “abrogated” (*al-mansūkh*), the former, says Āmidī, is subject to a variety of uses: sometimes it is applied to God, sometimes to specific texts, sometimes to rules that replace other rules, and sometimes to the mujtahid who claims that a rule has been abrogated. However, only God, says Āmidī, is an abrogator in the proper sense; all other uses of the term are *majāz*. “Abrogated,” on the other hand, is by general agreement applicable only to one thing: the rule that has become inoperative.

Having completed his discussion of the definition of “abrogation” and related terms, Āmidī turns to three other topics that require attention before he is able to launch into his account of the various controversies relating to abrogation. These are the difference between abrogation and progressive realization (*al-badā’*), the difference between abrogation and indication of specific reference (*takhsīs al-‘āmm*), and the conditions that an abrogation must satisfy in order to be a genuine abrogation. Āmidī’s discussion of the first two

of these topics shows that abrogation could be confused with progressive realization, on the one hand, and with indication of specific reference, on the other; and it shows also that such confusion could lead to a serious misunderstanding of abrogation.

Āmidī identifies two groups as confusing abrogation with progressive realization:⁴ the Jews and the Shī'ī sect known as the Rawāfid. For both of these groups, God's abrogating of a rule and replacing it with another rule could only mean that something that had been previously hidden from God—a benefit accruing from the later rule but not from the earlier one—had subsequently become manifest to him. Abrogation thus seemed to these groups to entail a gradual progression in God's knowledge, a movement in God from lesser knowledge to greater knowledge. For the Jews (as represented in Āmidī's account), since such a progression in God was totally unacceptable, the idea of abrogation was altogether repugnant, and they, accordingly, rejected it. One can see in Āmidī's account of the Jewish position intimations of broader issues dividing Jews from Muslims. Muslims could utilize the notion of abrogation to invalidate Jewish law, for while Muslim mujtahids were understandably preoccupied entirely with abrogation as a phenomenon involving the texts upon which they based their formulations of the law they could also, in the context of interreligious dialectic, use this notion to invalidate all that had become obsolete with the coming of the Prophet Muhammad. In the interreligious context it is not merely particular rules of law that may be regarded as abrogated but entire corpora of law.

For the Rawāfid the notion that a thing could become evident to God after having been previously hidden from him was, at least according to Āmidī, acceptable; in order to substantiate this idea the Rawāfid, we are told, quoted sayings of three of their Imāms, 'Alī, Ja'far al-Sādiq, and his son Mūsā, as well as a verse from the Qur'ān ("God erases whatever He wishes," 13:39). But they wrongly interpret the Qur'ānic verse, Āmidī assures us, and the sayings they quote prove, under scrutiny, to be spurious.

Thus in order to safeguard the divine being against any infringement upon the eternal perfection of his knowledge while at the same time retaining his ability to abrogate, it is imperative, from Āmidī's point of view, that abrogation be clearly dissociated from progressive realization. The difference between them is as follows. When a rule of law is replaced by a contrary rule because a benefit that was previously hidden from view has become evident, this is progressive realization. However, when a rule of law is replaced by a contrary rule simply by virtue of the Legislator's willing this replacement, this is abrogation. To those who insist that God takes human benefit into account in his giving of the law it can be said that God, far from progressing from a

lesser to a greater knowledge, knows eternally that a particular rule results in a benefit at one point in time while at another point in time the abrogation of that rule results in a benefit.

While the confusion between abrogation and progressive realization is a matter of concern mainly in interreligious or intersectarian dialectic, that between abrogation and indication of specific reference (*takhsīs al-ʿāmm*) has ramifications for dialectic within mainstream Islam.⁵ It may be recalled from chapter 8 that there was a tendency among a few Muslim jurists to assimilate indication of specific reference to abrogation. One of the requirements of indication of specific reference, we should remember, is that there be a contradiction between the specific reference of one passage and the *apparently* general reference of another (that is to say, the reference that it carries by virtue of its primordial assignment or *wadʿ*). For example, if the Legislator says, “Cut off the hands of all thieves,” and also says, “Do not cut off the hands of thieves who have stolen an amount worth less than a quarter of a dinar,” we have, at the level of apparent reference, a contradiction. The Legislator is in effect saying, “Cut off the hands of all thieves,” while also saying, “Do not cut off the hands of all thieves, just some thieves.” When such a contradiction emerges, the mujtahid must then, according to the partisans of generality (*arbāb al-ʿumūm*), eliminate it by treating the expression “all thieves” as *majāz*, that is to say, as an expression that has been diverted from the general reference proper to it to a specific reference. The principle behind this procedure is that a contradiction may be left to stand only when it cannot be eliminated through a viable interpretive procedure such as that just indicated. At least a few jurists, however, were not so sure that a contradiction could be eliminated in this way. They preferred rather to treat expressions such as “all thieves” as having the general reference proper to them and to let contradictions of the sort under consideration stand. Given such a contradiction, they could then postulate abrogation.

Since for the majority of Muslim jurists abrogation and indication of specific reference were entirely distinct from one another and deserving of separate treatment in the dialectic process and in the jurisprudential literature, it was imperative that they make clear the differences between them. Before spelling out these differences, however, Āmidī notes one respect in which the two operations are alike: they both have the effect of restricting the application of a rule contained in a given text to a *part* of that to which the rule applies by virtue of the sheer language of the text. Āmidī in fact here uses the term *takhsīs*, which as a component of the phrase *takhsīs al-ʿāmm* I have been rendering as “indication of specific reference,” to describe this commonality between the two operations. Later on, in explaining the position of certain

Muʿtazilis who regarded abrogation as a type of *takhsīs*, he provides a rationale for using the term in this way. According to these Muʿtazilis, both abrogation and indication of specific reference are types of *takhsīs*. *Takhsīs* is thus, in their way of thinking, a broad category inclusive of all types of restriction upon the application of a rule of law where the language allows a wider application: restriction to certain times, to certain persons, to certain situations. Abrogation could accordingly be defined as the indication of the restriction of the application of a rule to a certain period of time (*baʿd al-azmān*, literally, “certain times”). Such an indication may occur only when the original statement of the rule contained no reference to a time limit, thus signaling, at the level of apparent meaning, that the rule was to be operative indefinitely. From this we are, it seems, to conclude that the *takhsīs* that I have been calling “indication of specific reference” has to do with a restriction of the application of a rule to certain persons or situations.

The notion that abrogation entails a restriction of the application of a rule of law to “certain times” (*baʿd al-azmān*) requires, incidentally, some clarification. It will be recalled that among the general expressions listed earlier in the *Ihkām* were expressions that relate to the category of time. If, for example, the Legislator says, “When the sun sets, perform the *salāh*-prayer,” he is employing a general expression, “when,” that signifies as its literal sense a general reference to all times (or to all members of the class of times) at which the sun sets. If, then, he indicates in some other statement that he intended, in using “when,” a reference to some but not all times of the setting of the sun—if, for example, he indicates that the *salāh*-prayer is to be performed at the setting of the sun on all days except Monday—what we have in this case is clearly an indication of specific (as opposed to general) reference, not an abrogation. If, on the other hand, the Legislator indicates in a later statement that people are no longer to perform the *salāh*-prayer at any setting of the sun, then we have a very different sort of restriction: in this case the rule that makes the *salāh*-prayer obligatory at the setting of the sun is restricted to a certain *period* stretching from the time when the rule first became operative to the time when it ceased, by virtue of the later statement, to be operative. This constitutes a clear abrogation.

Āmidī’s use of the term *takhsīs* to describe a feature common to both abrogation and indication of specific reference actually muddies the waters somewhat, since in his listing of the differences between the two operations he uses this same term as a designation for indication of specific reference. We are thus presented with the initially confusing proposition that abrogation and *takhsīs*, while differing in various respects, have one thing in common, namely, *takhsīs*. Āmidī dispels the confusion in his account of the controversy

provoked by the above-mentioned Muʿtazilī view of *takhsīs*. Most jurists were opposed to this view on the ground that it undermines the distinctiveness of *takhsīs* vis-à-vis abrogation. The real issue in this debate was, however, terminological. The majority of jurists preferred to limit *takhsīs* as a technical term of the science of theoretical jurisprudence to what I have called “indication of specific reference,” which translates into the restriction of a rule of law to some as opposed to all members of a given class, and to preserve its distinctness from abrogation. For them, therefore, abrogation and *takhsīs* were mutually exclusive terms and the differences between the operations they designated were a matter of great interest.

We may now consider Āmidī’s listing of these differences.

Both abrogation and indication of specific reference, Āmidī has told us, have the effect of restricting the application of a rule contained in a given text to a *part* of that to which the rule applies by virtue of the sheer language of the text. “Face Jerusalem when you perform the *salāh*-prayer,” applies, by virtue of its language taken at face value, to an indefinite stretch of time. “Face the Kaʿba when you perform the *salāh*-prayer” restricts the application of the “face Jerusalem” rule to a part of that stretch of time, namely, the period ending with the issuance of the “face the Kaʿba” rule. But “As for the thief, male and female, cut off their hands” applies, by virtue of its language taken at face value, to the entire class of thieves, whereas “Do not cut off the hands of thieves who have stolen an amount worth less than a quarter of a dinar” restricts the application of the rule of amputation to a part of the class of thieves, namely, those thieves who have stolen an amount worth more than a quarter of a dinar.

The first difference between the two operations has to do with the intention of the speaker: in the case of abrogation there is a change of intended meaning, whereas in the case of indication of specific reference there is not. When the Legislator says, “As for the thief, both male and female, cut off their hands,” and in another text says, “Do not cut off the hands of thieves who have stolen an amount worth less than a quarter of a dinar,” the latter text indicates that the Legislator, in the former text, intends that the penalty of amputation should apply only to a part of the class of thieves. The two texts work together to indicate a single, unchanging intention.

But when the Legislator says, “Face Jerusalem when you perform the *salāh*-prayer,” and then subsequently says, “Face the Kaʿba when you perform the *salāh*-prayer,” the latter text indicates to us that an original intention has been replaced by a new intention; in saying “Face Jerusalem” the Legislator intended that the rule requiring performers of the *salāh*-prayer to face Jerusalem should be operative for an indefinite period, while in saying “Face the

Ka'ba" he indicated that this original intention was replaced by a new intention—that this rule should be operative only for part of that stretch of time. Only where an original intention is rescinded can there be a true abrogation. Accordingly, in abrogation the two texts are not working together as a unit to indicate a single intention.

The change of intention in abrogation should not be taken to imply an inconsistency in the mind of the Legislator. Ash'arī theology—including Āmidī's version of it—allows us to affirm that God eternally wills that the words "Face Jerusalem" should, until the time of his saying "Face the Ka'ba," convey to believers a rule subject to no time limit and that the words "Face the Ka'ba" should indicate to them that this same rule is subject to a time limit. God's intentions, though inherently eternal and unchanging, are linked to particular times and circumstances and may vary relative to those times and circumstances.

The second difference is that abrogation may pertain to the commanding of a single thing, whereas an indication of specific reference may not. Āmidī does not offer an explanation of this point, which is somewhat obscure.

Third, abrogation occurs only by virtue of addressed speech of the Legislator, whereas indication of specific reference is possible through other indicators such as analogy. Āmidī seems here to be giving the expression "addressed speech" a more restricted meaning than in many other contexts in the *Ihkām*. For example, in defining *hukm* as a type of addressed speech⁶ he earlier suggested that *any* rule of law, even one established on the basis of analogy, may be subsumed under the category of addressed speech ("speech" here having, quite obviously, the sense of internal or psychic speech). Here "addressed speech" seems to be limited to the actual words of the two principal depositories of revelation, the Qur'ān and the Sunna.

Fourth, the abrogating text must lag behind the abrogated text, whereas an indicator of specific reference may either lag behind or precede the affected text. Chronological order is thus a vital factor in abrogation, but not in indication of specific reference.

Fifth, an abrogation may altogether abolish the authority of the abrogated text for future situations, whereas an indication of specific reference may not: it always retains the authority of the affected text. For example, an indication that "thief" in Qur'ān 5:38 has a reference only to thieves who have stolen an amount worth a quarter of a dinar or more preserves the authority of that verse as an indicator of the penalty of amputation.

Sixth, abrogation may not be effected through an analogy, whereas an indication of specific reference may be so effected. This point is in line with the general principle that abrogation is confined to the domain of Qur'ānic

and Sunnaic texts, which, as Āmidī's subsequent account of the various controversies relating to abrogation shows, was not universally accepted by Muslim jurists. Since this point is contained within his statement of the third difference between abrogation and indication of specific reference (see above), one wonders why Āmidī singles it out for separate mention. As his subsequent account of the controversies reveals, Āmidī could have added still another point of contrast: abrogation may not be effected through the *Ijmā'*, whereas an indication of restricted reference may be so effected. Both this point and the point about analogy presuppose, it should be noted, a majority point of view, not a consensus, for Āmidī has pointed out earlier in the *Ihkām* that at least some jurists did not accept either the *Ijmā'* or analogy as an indicator of specific reference.

Seventh, an abrogation is the abolition (or rendering inoperative) of a rule that has previously been operative, whereas an indication of specific reference is not. This point is in line with the fifth (above).

Eighth, an entire corpus of law (*sharī'a*) may be abrogated by another corpus, whereas no corpus of law may be subject to an indication of specific reference drawn from another corpus. For example, the Torah may be said to be abrogated by the law revealed through the Prophet Muhammad, but a general expression found in the Jewish scripture may not be said to have a specific reference by virtue of an indicator supplied by an Islamic source.

Ninth, when a rule is couched in general expressions, an abrogation of that rule invalidates the application of the rule to all those persons or things to which it is applicable by virtue of its language taken at face value, whereas an indication of specific reference invalidates the application of the rule only to some of those persons or things, not to all of them. This point, too, is closely related to the fifth point (above).

Tenth, *takhsīs* is a larger category of which abrogation is a subcategory: while every abrogation is a *takhsīs*, not every *takhsīs* is an abrogation. This point is dependent upon the broader understanding of *takhsīs* noted above, which makes both abrogation and indication of specific reference subcategories of *takhsīs*. It thus does not state a difference between abrogation and *takhsīs* in its more specialized sense of indication of specific reference.

Āmidī divides the "conditions of Shari'a abrogation" (*shurūt al-naskh*)⁷—that is to say, the conditions that an abrogation must satisfy in order to have relevance within the terms of the Shari'a—into two categories: those that the jurists agree upon and those that are disputed. The former category embraces the following three conditions:

1. The abrogated rule must be a rule contained within the Shari'a. In other words, rules devised by human beings apart from the Shari'a

are not subject to abrogation since they are without validity in the first place. Abrogation, let us remember, is the rendering invalid (or inoperative) of what has previously been valid.

2. The indicator of the abrogation must also itself be contained within the Sharī'a and must "lag behind" (*mutarākhiyan 'an*) the text containing the abrogated rule. Āmidī means by this that the abrogating text must be subsequent to the text containing the abrogated rule without being an appendage to that text. He is here repeating a point already made in connection with the fourth difference between abrogation and indication of specific reference (see above); it is also a point touched on in Bāqillānī's definition of abrogation.
3. The text containing the abrogated rule must not tie the rule to a particular time-frame. If a text indicates that a rule will be operative up to a certain point in time (as in "Face Jerusalem when you perform the *salāh*-prayer until such time as I command otherwise"), its invalidity after that point is already established, and a genuine abrogation cannot, therefore, take place.

The disputed conditions—that is to say, the conditions that some jurists-prudents acknowledge while others do not—are as follows:

1. The abrogating text must have been revealed after the time when it is possible to obey the abrogated rule has begun. The controversy over this point is the second in Āmidī's account (see below).
2. The text containing the abrogated rule must not be subject to an exception or an indication of specific reference. Āmidī seems to be saying that the abrogation must be a true abrogation and not merely an indication of restricted reference. (Exception is itself, let us remember, a type of indication of specific reference.) The controversy over this condition was touched on in an earlier section of the *Ihkām* in which Āmidī takes note of those few jurists-prudents who regarded indication of specific reference as a type of abrogation. This condition, then, reflects the concern of the majority of jurists-prudents to dissociate abrogation from indication of specific reference.
3. Where a rule contained within a Qur'ānic text is abrogated, the abrogating text must also be a Qur'ānic text; and where a rule contained within a Sunnaic text is abrogated, the abrogating text must also be a Sunnaic text. Abrogation may not, in other words, cross the line between these two categories of authoritative texts. The controversy over this condition breaks down into two separate controversies in Āmidī's subsequent account: the ninth and the tenth.

4. The abrogating text and the abrogated text must both be certain in their meaning and authenticity; or, to employ the key Arabic expression, they must be *nass qāṭiʿ*, texts whose authenticity is unassailable and whose meaning is altogether free of obscurity. The controversy over the authenticity aspect of this condition appears as the eighth in Āmidī's account.
5. The abrogating text must stand in opposition to the abrogated text in the way a positive command stands in opposition to a negative command or a restraining command stands in opposition to an enabling command. Āmidī records no controversy that pertains directly to this condition.
6. The abrogating text must substitute a rule for the abrogated rule. The controversy over this condition appears as the fourth in Āmidī's account.

On examining Āmidī's account of the controversies that relate to these conditions, we discover that Āmidī himself accepts the second and fifth of the above conditions, rejects the first, third, and sixth, and withholds judgment as to the fourth.

We may now turn to Āmidī's account of the various controversies relating to abrogation, including those that relate to the above conditions and others. Altogether Āmidī records twenty such controversies.

The first controversy embraces two issues:⁸ whether abrogation is theoretically possible and, assuming that it is, whether it has actually occurred. These two issues form a logical sequence of the sort we have encountered before. If abrogation is not theoretically possible, then the issue of whether or not it has actually occurred cannot arise, for what is not possible cannot occur. This latter issue can, therefore, be considered only *after* the issue of whether or not abrogation is possible has been resolved in favor of its being possible.

According to Āmidī, all followers of a divine law (*ahl al-sharāʿ*), with two exceptions, maintain both that abrogation is possible and that the law contains actual instances of it. The exceptions are to be found mainly among the Jews; among the Muslims only one dissenter from the generally held view is mentioned—Abū Muslim al-Isfahānī. He conceded that abrogation is possible but denied that the law contains actual instances of it. Among the Jews, two parties adopted a dissenting position. The ʿInānīya held the same view as Abū Muslim: abrogation is possible but is not actually to be found in the law. The Shimʿunīya, on the other hand, went further: they denied that abrogation was possible. A third party of Jews, the ʿĪsawīya, adhered to the majority view.

Anyone familiar with the literature of Islamic theoretical jurisprudence cannot but be struck with the interreligious character of the dialectic as thus laid out. Interreligious dialectic is, as a rule, much more typical of the literature of speculative theology (*kalām*). A brief moment's reflection will, however, make it clear why the subject of abrogation should give rise to such dialectic. The notion of abrogation is, as we have noted, a means whereby Muslims are able to invalidate entire corpora of law: with the appearance of the Shari'a introduced by Muhammad all other *shari'as*—those introduced by earlier prophets—become invalid. Abrogation is thus not only an inter-textual operation; it can also be the operation of a more recent corpus of law upon an earlier corpus. The Muslim position toward other monotheistic communities that are in possession of recognized scriptures—the so-called “people of the Book” (*ahl al-kitāb*)—is, let us remember, twofold. On one hand, the earlier communities are believed to have corrupted the law vouchsafed to them through their prophets, substituting for the divine law the law of their own devising, while, on the other hand, they are believed, despite this corruption, not to have lost sight of the divine law entirely.

However, this continuing presence among them of the divine law in truncated form did not warrant their adherence to this law after a new corpus of divine law had become available to them. Once the Prophet Muhammad had appeared on the scene, they were duty-bound to turn from all law transmitted from their ancestors, both the spurious and the genuine, and to obey only the law now vouchsafed to them through Muhammad. The earlier corpora, in other words, were of strictly temporary validity. What came through Muhammad abrogated them in their entirety. Abrogation, in this sweeping form, heralds the dawn of a new dispensation.

We would perhaps do wrong to suppose that Āmidī has examined the belief systems of all religious communities that were classified by Islamic theology as “people of the Book” and has arrived by induction at the conclusion that all these communities, with the exceptions just mentioned, accept both the possibility and the actuality of abrogation. However, the only other non-Muslim religious community that had an importance in Muslim thinking comparable to that of the Jews—the Christian community—clearly fits this pattern. Whereas Jews had acknowledged no law antecedent to that given through Moses, the Christians had come into being as a religious community in the shadow of the Mosaic law and had, while recognizing the temporal validity of that law, turned from it in favor of a new and, in their view, higher law. Thus the Christians could not but embrace, in the Muslim view, the notion of abrogation. Āmidī's account seems to assume that only the Jews had reason, by virtue of being the possessors of the most ancient corpus of

divine law, to reject the notion of abrogation and that all other monotheistic communities were obliged by the logic of their posteriority in relation to the Mosaic law to accept this notion.

One may wonder whether those Jews who, according to Āmidī, denied the possibility and/or actuality of abrogation were thinking only of the abrogation of the entire Mosaic law by later corpora and not of abrogation as an intertextual phenomenon occurring *within* the Mosaic law. Āmidī's account suggests that the two types of abrogation were not separated from each other and that the Jews in question rejected both types. If, indeed, Jews rejected the notion of abrogation for the reason given by Āmidī—that it implied a progression within God—then presumably these Jews would have rejected abrogation altogether, including abrogation of earlier parts of the Mosaic law by later parts. However, Āmidī does not explicitly say that this was the case.

Both Abū Muslim, among the Muslims, and the ʿĪsawīya, among the Jews, represent intriguing cases; we would like to know more than we do from Āmidī's scant references. Did Abū Muslim deny that genuine Mosaic law was abrogated by the law that came through Muhammad, or was the abrogation whose actuality he denied limited to the abrogation of earlier parts of Muhammad's law by later parts? Concerning the ʿĪsawīya Āmidī gives us an illuminating piece of information: they acknowledged the prophetic mission of Muhammad but regarded it as limited to the Arabs, thus in effect denying its universality. From this we must conclude that the ʿĪsawīya subscribed to a divinely ordained pluralism: the Jews had their corpus of divine law, the Arabs had theirs. Each of these corpora was valid only for the community to which it was originally given. Since the law given to the Arabs was posterior to the Mosaic law, it could be said to abrogate that law, but only for the Arabs. Thanks to Muhammad, the Arabs were not bound to adhere to the Mosaic law: it had no validity for them. Whether the ʿĪsawīya included other monotheistic communities, especially the Christian, in their pluralism is not indicated in Āmidī's account.

As might be expected, Āmidī accepts the majority point of view. First he presents arguments for abrogation's being possible, defending them against various objections; then he turns to arguments for abrogation's being an actuality. Since the Shimʿuniya are the only party mentioned by Āmidī that denied the possibility of abrogation, one might readily conclude that the controversy over the issue of possibility pitted Muslim jurists as a whole against a particular Jewish party and that the Muslims did not debate this issue among themselves. However, as we explore this controversy, we soon discover that it has at certain points a definite intra-Muslim flavor. The deniers of the possibility of abrogation seem to be ardent rationalists, and some of the arguments

they propound could very well have been advanced by Mu'tazilis. Āmidī in fact does here and there make reference to the Mu'tazilis. Furthermore, where examples are given, they are from Islamic texts; and Āmidī's *reductio ad absurdum* occasionally appeals to commonly held Islamic beliefs. On the other hand, where the arguments do not have a distinctively Islamic flavor, they may very well have been advanced by Jews, although this is entirely conjecture. It remains the case that Āmidī, in his opening summation of basic positions, mentions no Muslim individual or party in connection with the denial of the possibility of abrogation.

Āmidī divides the arguments for the possibility of abrogation into two categories: rational argument and argument from authoritative texts. The rational argument contends for the *logical* possibility of abrogation; it states, in effect, that the notion of abrogation does not contradict any acknowledged truth. The argument runs as follows. Either God does what he wills without any consideration of a rationale or end or he takes a rationale or end into account. If the former is the case, then we may affirm without lapsing into self-contradiction that God may declare an act to be obligatory in one moment and declare the same act to be forbidden in another. There is, in other words, nothing in this affirmation that is logically inconsistent with other affirmations that we make. If, on the other hand, God does take a rationale or end into account, we may still affirm that God may declare an act to be obligatory in one moment and forbidden in another, since rationales or ends can change from one situation to another: it is certainly conceivable that God's making an act obligatory may result in a benefit in one situation, while in another situation his making the same act forbidden may result in a benefit. Āmidī is here trying to show that even within the framework of a rationalist view of law that he himself does not accept it is possible to argue for the logical possibility of abrogation.

The latter part of this argument repeats a point that Āmidī has already made in attempting to show why abrogation must be distinguished from progressive realization; as we proceed to his account of the objections of the opposition we discover that the opposition does indeed identify abrogation with progressive realization and reject it precisely because it may be so identified. We are thus presented here with a fuller account of a dialectic that has been touched on earlier. The opposition—the Shim'uniya, if we take Āmidī's account at face value—insists that abrogation can only mean that some end that was not originally apparent to God became apparent to him. God necessarily, according to this line of thinking, takes ends into account, since his actions would have to be regarded as frivolous if he did not. This being the case, then if he abrogates rules of law, he can only do so because his grasp

of ends develops progressively over time. But to affirm this is to affirm that something can initially be hidden from God and subsequently become manifest to him. This latter affirmation contradicts our affirmation of the eternal perfection of God's knowledge.

But, says the opposition, if you try to make a case for abrogation by arguing that God's making an act obligatory may result in a benefit in one moment but not in another, then you are obliged to allow that *all* rules are subject to the possibility of abrogation, including those rules that form the basic creed of one's religion. In medieval Islam a creed, let us remember, is a statement of *obligatory* beliefs: it provides rules as to what we are to believe about God, about prophets, and about the world. It was the conviction of many Mu'tazilis that the obligation to confess certain basic verities, such as the oneness of God, could be established on rational grounds, quite apart from revelation, and that this obligation was perpetual by virtue of its rational basis. Apparently, judging from Āmidī's account, the Shim'uniya followed the same line of thinking. Rational obligation, let us remember, was for the Mu'tazilīs obligation that arises from a rationale or end discernible to human reason. While in the case of obligations that exist in the realm of daily affairs the rationale or end might change, this could not be true, it appears, of obligations relating to basic creedal tenets. The rationale or end served by the obligation to confess the oneness of God was, we may gather, perpetual.

In his response to this line of reasoning, Āmidī seems to shift away from his initial attempt to make sense of abrogation within a framework of a rationalist view of law. He now states that if one regards the obligation to confess the central verities as based, not on rational grounds, but solely on revelation one has no reason to deny the logical possibility of abrogation of such obligation. Strange as it may seem, the notion that such obligation may be abrogated does not contradict any other affirmation that one is required to make within a framework of a nonrationalist view of law.

The opposition next adopts an approach that does not entail any specifically rationalist notions. Either the text containing a particular rule ties the rule to a specific time-frame or it signifies that the rule is to be operative in perpetuity. If it ties the rule to a specific time-frame, the rule cannot be abrogated, since its operativeness terminates automatically when its time expires. If it signifies that the rule is to be operative in perpetuity, then the abrogation of the rule is logically impossible inasmuch as the following four absurdities follow from it:

1. The text containing the rule is leading people to believe that the rule is perpetually operative when in fact it is not. The text is, in other words,

conveying wrong information about the rule and thus engendering ignorance in the minds of people. But to affirm that any text that embodies divine revelation may engender ignorance is to contradict the principle that God is above the unseemly, for the engendering of ignorance is an unseemly act.

2. There is no way for us to know what is perpetually operative and what is not, since we cannot rely upon the language of the text.
3. We cannot have confidence in God's promises and threats and in the literal meaning of texts generally speaking.
4. The entire corpus of law revealed through Muhammad is in principle subject to the possibility of abrogation, since none of the indications of its perpetual validity can be taken at face value.

All of these absurdities, it should be noted, entail a contradiction of some generally held Islamic tenet. It should further be noted that in speaking of texts that signify that a rule is to be operative in perpetuity Āmidī does not seem to have in mind only texts that signify this explicitly. The force of the argument depends upon the exhaustiveness of the two basic categories of texts: those that tie a rule to a time-frame and those that signify that a rule is operative in perpetuity. Since there can be, according to this argument, no third category, we must conclude that all texts that do not explicitly tie a rule to a time-frame *are taken to signify* that the rule is operative in perpetuity. Thus whether the Legislator says, "Perform the *salāh*-prayer forever" (*abadan*) or merely "Perform the *salāh*-prayer" makes no difference: in both cases his words signify that the rule relating to the *salāh*-prayer is operative in perpetuity. The use of expressions such as "forever" in connection with rules is a matter of special interest that Āmidī takes up later.

Āmidī's reply to this attempt at *reductio ad absurdum* is as follows:

1. The claim that the text engenders ignorance presupposes that people do not acknowledge the possibility of abrogation. When people acknowledge this possibility, they will upon encountering a text that signifies that a rule is operative in perpetuity realize that it does not necessarily follow that the rule is actually operative in perpetuity. Thus any individual who takes the rule to be operative in perpetuity has made a rash judgment, and his ignorance stems from himself, not from the text. What is required is that one believe the rule to be operative in perpetuity *provided there is no abrogating text*.
2. One cannot say that it follows from the abrogation of a rule couched in language that signifies perpetual operativeness that God has no way of making known to us what is perpetually operative and what is not, since God is capable of creating in us an immediate knowledge of what

is perpetually operative. God has, of course, not done this, but his ability to do so suffices to refute the opponent's contention.

3. As for the matter of our confidence in the literal meaning of texts, that confidence is commensurate with the degree of clarity of the particular passage we are dealing with. It is not the case, in other words, that our confidence must, according to Islamic doctrine, always be absolute, as the opponent seems to contend.
4. Finally, the perpetual operativeness of the corpus of law revealed through Muhammad, considered in its entirety, is established by words of undisputed clarity, such as the Qur'ānic description of Muhammad as the Seal of the Prophets and Muhammad's own statement, "There will be no prophet after me."

As for the text-based argument for the possibility of abrogation, it employs a single Qur'ānic passage: "And for whatever verse We abrogate or cast into oblivion, We bring a better or the like of it" (2:106). This verse, contends Āmidī, shows that it is possible that God might abrogate his own revelations. It is to be distinguished from texts that constitute actual abrogations or refer to actual abrogations. These are the sorts of texts that are employed in arguing for the actuality of abrogation. In contrast, this particular verse could hold true without the occurrence of any actual instances of abrogation: it does nothing more than alert us to a possibility.

We may now turn to arguments that show that abrogation has actually taken place. These Āmidī divides into arguments directed to Muslims and arguments directed to Jews. Since no Muslim, according to his account, denied the possibility of abrogation, the arguments for its possibility were directed, at least *pro forma*, to Jews, specifically to the Shim'uniya. With the issue of the actuality of abrogation, the situation is different: the majority view now has Muslim (at least one) as well as Jewish detractors. Furthermore, the arguments must now all be text-based; strictly rational arguments are of no avail at this point.

The arguments directed to Muslims all appeal ultimately to the Ijmā', even when Qur'ānic or Sunnaic texts are cited. I have noted earlier in this book that since any Ijmā'ic consensus must be known from a transmitted report—that is to say, from a text—argument from the Ijmā' is a type of text-based argument. The appeal to the Ijmā' that we here encounter is, I think, significant. It indicates that there is among the Qur'ānic and Sunnaic texts no text that patently constitutes an abrogation or refers to an abrogation. Whether any particular Qur'ānic or Sunnaic text constitutes or refers to an abrogation is, in other words, very much a matter of individual interpretation. This means that, in order to have an authority to which to appeal in attempting to

prove that abrogation has actually occurred, one has no choice but to resort to the *Ijmāʿ*.

The *Ijmāʿ* to which Āmidī appeals is, as always, that of the earliest generations of Muslims: the Companions of the Prophet and the generations immediately following—the pious ancestors (*al-salaf*). Just how Āmidī has gone about establishing this *Ijmāʿ* he does not tell us. We may presume, however, that he has followed the usual method of first observing that a particular Companion said such-and-such and then noting that there is no record of any objection on the part of any other Companion to this statement.

The Companions and pious ancestors, Āmidī tells us, agreed upon the following:

1. That the corpus of law revealed through Muhammad abrogated all previous corpora.
2. That the rule that made it obligatory to face Jerusalem in the performance of the *ṣalāh*-prayer was abrogated by a later rule that made it obligatory to face the Kaʿba.
3. That an earlier rule that granted inheritance rights to one's parents and two close relatives was abrogated by the Qurʾānic verse that deals with inheritance.
4. That the rule that made it obligatory to fast during ʿĀshūrāʾ was abrogated by a later rule that made it obligatory to fast during Ramadān.
5. That the rule that made it obligatory to present voluntary charities confidentially to the Prophet was later abrogated.
6. That the rule that made it obligatory for a woman whose husband had died to wait a full year before remarriage was later abrogated.
7. That Qurʾān 8:65 (“If there be among you twenty steadfast [men] they shall overcome two hundred”) was abrogated by the verse that follows it (“Now has God lightened your burden, for He knows that there is weakness in you. So if there be among you a hundred steadfast [men] they shall overcome two hundred”).

To these examples of abrogations agreed upon by the Companions and pious ancestors many more, says Āmidī, can be added. He seems to assume that his Muslim readers would agree to this claim and would themselves be able readily to think of further examples. The amplitude of instances of consensus-ratified abrogation is obviously important to Āmidī's argument. In my earlier chapter on the *Ijmāʿ* (chapter 5 of Part II) I stressed the fact that the appeal to *Ijmāʿ*ic authority is always fraught with problems. We may suppose that any one of the seven instances that Āmidī cites might, taken by itself, be less than convincing to some minds. However, as the instances multiply a momentum in favor of abrogation grows: the average reader is expected to

conclude that so many instances could not all be invented. We must bear in mind, too, that the issue of whether abrogation has actually occurred is not specifically earmarked by Āmidī as an issue that requires a conclusive resolution. We may therefore, it seems, regard it as subject to resolution through opinion. What is required is thus not absolute certainty that abrogation has occurred but only the sense that its occurrence is probable. Appeal to the *Ijmāʿ* can work perfectly well, as we have seen, to establish the probable. Āmidī's argument is intended to leave the reader with the feeling that the actual occurrence of abrogation is more likely than its nonoccurrence.

With the arguments directed to Jews we come to a fascinating albeit rare facet of the Muslim jurisprudential enterprise. How does one go about developing a text-based argument for an antagonist who does not accept the authority of the Qurʾān or Sunna or of the Muslim consensus? The answer that emerges from Āmidī's account is simple: one employs a text that is authoritative for the antagonist, in this case the Torah. The Torah, of course, is not for Muslims a source of presently valid rules: the doctrine of abrogation makes that clear. The Torah remains, however, to some extent—to the extent, that is, that it has survived the distortions brought upon it—a record of past rules and dicta. Medieval Muslims were, after all, sure that both the Torah and the Gospel contained references to Muhammad. It could therefore in principle be utilized to prove that abrogations had occurred in past times. Accordingly, Āmidī argues that God's ordering, in the time of Adam, of brothers' marrying their sisters was abrogated by later Torah laws that forbade such marriage. Furthermore, he continues, God's words to Noah, "I have made every creeping thing food for you and your descendants," were later abrogated by Torah laws that forbade the eating of certain creeping things.

The second controversy pertaining to abrogation takes us back into the issue of what is possible and what is not.⁹ It now becomes apparent to us that in the previous debate over the possibility of abrogation what was at issue was abrogation of a rule after a period had elapsed during which the rule could actually be implemented. The classic example is the abrogation of the rule requiring one to face Jerusalem during the performance of the *salāh*-prayer: this is a rule that had actually been observed in the performance of the *salāh*-prayer for a time. What is at issue in the second controversy is abrogation of a rule prior to the time when the rule may be implemented. Since it is the possibility of such abrogation that is under discussion, not its actuality, the examples are understandably all hypothetical. Such an example would be the Legislator's saying, for example, "You must perform the pilgrimage at such-and-such time," and then, before the specified time arrives, declaring, "Do not perform the pilgrimage at that time." The issue, in other words,

is whether it is possible that the Legislator, upon introducing a rule, would abrogate it before anyone had a chance to implement it. Is it possible that the Legislator would change his law so prematurely, so to speak—that is to say, in a manner that would have no bearing upon the actual behavior of his subjects? The methodological importance of this issue may be seen by imagining that a mujtahid is claiming that a particular rule was abrogated by a particular saying of the Prophet. If abrogation of the sort under consideration is impossible, then another mujtahid might, upon discovering that the saying of the Prophet occurred before anyone had a chance to implement the rule, contest this claim and insist that the rule remains in effect. He would, perhaps, raise doubt about the first mujtahid's interpretation of the Prophet's saying or about the authenticity of the particular version of the saying used by him.

Āmidī summarizes the positions in the controversy over this issue as follows. According to the Ash'arīs, most Shāfi'īs, and most *fuqahā*, abrogation of a rule prior to the time when it may be implemented is possible, whereas according to the great majority of Mu'tazilīs, some Hanbalīs, and, among the Shāfi'īs, Abū Bakr al-Sayrafī it is not possible. Āmidī himself opts for the first of these positions and supports it with two arguments. Although he does not classify these arguments, it is clear that the first is text-based and the second a rational argument.

The first argument appeals to a Sunnaic text. According to a highly reliable (*sahīh*) report, on the occasion of the Prophet's miraculous night journey to Jerusalem God imposed upon him and his community fifty daily performances of the *salāh*-prayer. Moses advised him to return. "Your community is weak," he said, "and incapable of that; so ask God for a lessening [of the requirement]." So the Prophet accepted this advice and asked God to lessen the requirement, and God abrogated the requirement of fifty daily performances and in the end imposed five performances. Thus the abrogation occurred before the time for actually performing the *salāh*-prayer had arrived. Āmidī admits that the text in which this story is found is, as a non-*mutawātir* text, not of absolutely certain authenticity, despite its being placed in the highest category of probability possible for a non-*mutawātir* text; however, he insists that the issue at hand is among those that admit of resolution through considered opinion such that a text of probable authenticity may be decisive.

The second argument addresses a theological problem entailed in the view favored by Āmidī. If the Legislator introduces a rule and then, before people have had a chance to implement it, abrogates it, can the people be said to have been *subject to* the rule? Can an obligation truly exist when there has never been an opportunity to discharge it? If obligation does not exist, then how

can it be said that the Legislator has introduced a rule? The position adopted by Āmidī thus seems, at least at first glance, to contradict some basic affirmations of Islam. In order to eliminate this absurdity, Āmidī argues as follows. It is possible (in the sense that it contradicts no established truth) that God might put a man under an obligation to perform a particular act at some future time and then forbid him to perform the act before the time actually arrives, so that the man is, in the first instance, truly under an obligation in the sense that he must perform the act *on condition that* there be no obstructing factor (viz., an abrogation). Thus it is possible for a rule to be introduced with the understanding that it is to be regarded as operative only so long as it is not abrogated and that an abrogation might in fact occur.

But other problems arise, and the opposition is quick to point them out. One of these arises only within the framework of a rationalist view of law. Obligatory acts, like all acts that God commands, are intrinsically good, while forbidden acts are intrinsically bad. Now if God makes a particular act obligatory and then, subsequently, makes it forbidden, this cannot be because the act was first good and then became bad. We are left, therefore, with only one conclusion: God initially supposed the act to be good and then subsequently came to the realization that it was bad. We are left, in other words, with the notion of progressive realization (*al-badā'*) in God. But this, too, is impossible for reasons previously given. Āmidī deals with this problem by referring his reader to an earlier section in the *Ihkām* in which he showed the notion of the intrinsic goodness and badness of acts to be invalid. But what of the idea that acts are obligatory or forbidden by virtue of some benefit or harm they produce? Does this not create the same problem? No, says Āmidī (reminding his reader that he does not in any case subscribe to the view that God necessarily takes benefit or harm into account in deciding whether acts are obligatory or forbidden): it is possible that at the time God declares an act to be obligatory it would, *if* performed, be productive of some benefit and that at the time he declares it to be forbidden it is productive of harm. God's addressed speech is, in other words, linked to a multiplicity of circumstances, to what might be called multiple *Sitzen im Leben*.

But do we not still face a problem concerning the divine will? If God makes an act obligatory and then subsequently makes it forbidden, is it not clear that he did not will the act in the first place and that his original making the act obligatory was in conflict with his will? Once again, Āmidī is able to remind his reader of a point argued earlier in the *Ihkām*: God may command what he does not will. But how then do we maintain the unity of the divine speech? This question, too, has been previously addressed: the divine speech,

though a unity in itself, is varied in relation to the many *Sitzen im Leben* to which it is addressed.

The third and fourth controversies pit the majority of jurists against a very small minority (*shudhūdh*) and, judging from the brevity of Āmidī's account, seem to be of minor importance. The third takes up the question of texts that introduce rules of law with language that expressly states that the rule is to be perpetually operative.¹⁰ If the Legislator said, for example, "Fast forever during the month of Ramadān" (*sūmū abadan*), would his words signify that the rule thus expressed could never be abrogated? The overwhelming majority, says Āmidī, answer in the negative, with only a very few taking exception. Expressions such as "forever" can, he argues, only be taken at face value when there is no indicator (viz., an abrogating text) that shows that the rule is really operative within a finite time-frame.

The issue in the fourth controversy is whether a rule may be abrogated without being replaced by another rule.¹¹ The overwhelming majority say it may, with a small minority dissenting. It is possible, in other words, that the Legislator might have abrogated the "Face Jerusalem" rule without introducing a rule such as "Face the Ka'ba": he could simply have declared the "Face Jerusalem" rule to be no longer operative. This would have entailed a return to the situation that obtained before the "Face Jerusalem" rule was introduced. That it is possible for the Legislator to abrogate a rule without replacing it results in no contradiction of an established truth, and there are, furthermore, known instances in which this has actually happened. Examples of rules that were abrogated without being replaced are the rule that required that voluntary charities be presented privately to the Prophet, that which required that a woman whose husband had died wait one full year before remarrying, and that which forbade the storing of the meat of sacrifices.

The fifth controversy is concerned with cases where the abrogated rule is replaced by another rule.¹² All agree that the abrogated rule may be replaced by a rule that is either less demanding or equally demanding, but is it possible for it to be replaced by a rule that is *more* demanding? Yes, say Āmidī's fellow-schoolmen and most speculative theologians and *fuqahā*; no, say some Shāfi'īs and some Zāhirīs. Certain jurists, we are told, held that this is theoretically possible but that there are no actual instances of it in the law. Āmidī regards the first of these positions as the most convincing. In the first place, the replacement of a rule by a more demanding rule is logically possible, since it does not contradict any established truth. Second, actual instances of such replacement can be cited. For example, at the beginning of Islam God made the Ramadān fast a duty but allowed a choice between it and the offering of a sacrifice out of one's material possessions. Later on, he abrogated this

arrangement by requiring the fast without allowing an alternative. Also, at the beginning of Islam God required confiscation of houses and a stern rebuke as the punishment for adultery; then later on he abrogated this by requiring banishment in the case of virgins and stoning in the case of nonvirgins. Furthermore, the obligation to fast during ‘Āshūrā’ was replaced by the more demanding obligation to fast during Ramadān.

The sixth controversy brings us to one of the most intriguing of all the issues related to abrogation:¹³ whether the recitation of a Qur’ānic passage can be considered as something that may be abrogated quite apart from the rule contained in the passage. Since the Qur’ānic text is preserved through recitation (the *mushaf*, or written text, being only a kind of record of the true text, which is oral), abrogation of recitation amounts to suppression, or non-preservation, of the text. An abrogated recitation is, in effect, a lost text. Thus far in describing abrogation as an intertextual operation—an impingement of one text upon another—I have had in mind an operation that occurs within the domain of the *meaning* of texts, the domain of rules. At this point, however, we are presented with an operation that affects the very existence of a text. Can the text, considered as a physical (aural) thing, be separated from its meaning as an object of abrogation?

In the controversy over this question we again (as in the third and fourth controversies) find an overwhelming majority pitted against a very small minority, all of them in this case Mu‘tazilis. The majority maintain that the recitation of a Qur’ānic text can indeed be abrogated apart from the rule contained in the text. This being the case, three things are possible: the rule may be abrogated but not the recitation of the text; the recitation of the text may be abrogated but not the rule; both the rule and the recitation may simultaneously be abrogated. It is important to understand that when the last of these possibilities occurs two separate abrogations are involved, an abrogation of the recitation of the text and an abrogation of the rule. The two abrogations are in this case conceived to be simultaneous. One wonders why the possibility that the two abrogations might occur at separate times did not enter into discussion. One gathers that any jurisprudent who was willing to distinguish abrogation of recitation from abrogation of a rule would have admitted the possibility that either might occur before the other.

In his account of the seventh controversy Āmidī suggests that the same sort of distinction between abrogations could be made with reference to Sunnaic texts.¹⁴ Sayings of the Prophet and reports of his deeds are, after all, transmitted through time, and if it is possible to abrogate transmission (i.e., recitation) of the Qur’ānic text it would seem eminently possible to abrogate transmission of Sunnaic texts. However, Muslim scholarship seems not

to have much concerned itself with the latter kind of abrogation. No doubt the greater interest of scholars in the abrogation of recitation of the Qur'ānic text was due to a concern for the integrity and perfection of that text. It has, let us remember, been a cardinal belief among Muslims that the complete text of the Qur'ān has been faithfully preserved by reciters and scholars down through the centuries. The "complete text" can, of course, only be whatever, from the material originally recited by the Prophet, God intended as a permanent legacy for his people—in other words, the text recited at the time of the Prophet's death. Since only God could decide what was to be included in that text and what was not, any suppression of material once recited had to be entirely his doing: it had to be, in other words, a divine abrogation.

The situation of the Qur'ānic text is in this respect much like that of the law. Like the Qur'ānic text, the law—in fact, the whole of the Shari'a—exists in its final definite form as a permanent legacy only at the time of the Prophet's death and thereafter. The period of prophetic revelation—the stretch of time between the Prophet's call and his death—is a period of flux for both the text and the law.

The notion of abrogation of recitation of the text but not of the rule contained in the text held special interest for Muslim scholars and has provided, for a modern scholar, support for a new theory of the origin of the Qur'ān.¹⁵ We should, I think, bear in mind that the same notion was applied to Sunnaic texts: Muslim scholarship almost universally recognized that rules could be passed to posterity by the Companions of the Prophet or even by a subsequent generation, while the original words of the Prophet that gave expression to the rule or a report of some deed of his that exemplified the rule were not. If an eminent Muslim of an early generation passed a rule on to posterity, it was assumed that he had an adequate textual basis for the rule even when he chose not to make it known. If all scholars of his generation supported the rule, then, of course, it carried the added endorsement of the Ijmā'.

Āmidī provides a rationale for the notion of abrogation of recitation of a Qur'ānic text as distinct from abrogation of a rule in the first of his two main arguments on behalf of this notion: his "rational" argument. He states it as follows:

The permissibility of reciting a Qur'ānic verse is a rule, and for this reason there is general agreement that it is rewarded, for the Prophet—peace be upon him—said, "Whoever recites the Qur'ān correctly merits for each word thus recited ten good things." Furthermore, whatever is derived from a verse in the way of an obligation or a forbidding of something or whatever is [also] a rule.¹⁶

Thus, according to Āmidī, each Qur'ānic verse that gives expression to a rule in fact entails two rules: the rule that makes recitation of the verse permissible and the rule to which the text gives expression. The reference to reward suggests that recitation is not merely permitted but recommended. From a strictly legal point of view, however, it is permissibility that matters. This permissibility is no doubt to be understood as pertaining to recitation as a purely individual activity, since recitation of the Qur'ān is, as a means of preserving it through time, a communal duty (*fard kifāya*). We must also bear in mind that the Arabic term here translated as “permissible,” *jā'iz*, has a much broader application among many Muslim authors than does *mubāh*, which is also often translated as “permissible” or “permitted” (though I have in this book refrained from this translation). For many authors any act that is not forbidden is *jā'iz*. The term is thus similar to *halāl*, “lawful.” Āmidī nowhere discusses this term, and it is difficult to determine the scope of the application it has for him. If it has the broad application, then it would allow for the possibility that Qur'ānic recitation is in fact obligatory.

Since the two rules under consideration—the rule pertaining to recitation and the rule contained in the text—are distinct from each other, their abrogations must also be distinct from each other. If the Qur'ān is indeed recited by virtue of a rule that renders its recitation permissible, then if we allow that rules may be abrogated we are constrained to allow that such a rule as this may be abrogated. For those who insist that God's rules take the effects of acts into account—the benefits or the harm they produce—Āmidī adds that while he himself does not share this view it need not be an obstacle to taking the position he is here advocating, for God may permit recitation in one moment and abrogate that permission in another (that is, forbid recitation) owing to the fact that in the former moment recitation produces a benefit and in the latter a harm.

In his account of the seventh controversy Āmidī makes a similar distinction with reference to the larger category of the report: one can, he says, distinguish between the abrogation of the report as such—that is to say, the report considered as a transmitted verbal deposit or text—and the abrogation of what the text signifies. In this context he speaks of the charge (*taklif*) to report something—a charge, that is, to make and transmit a report—as subject to abrogation. We thus seem to have here a rule relating to the activity of reporting/transmitting, which is to be distinguished from what the report signifies. In this case, however, the rule relating to reporting/transmitting seems to make that activity obligatory (depending on how one interprets *taklif*), whereas in the account of the sixth controversy he describes the rule

relating to the recitation of the Qur'ān as one that makes this activity merely permissible.

Āmidi's second argument on behalf of the distinction between the two kinds of abrogation here under consideration is an argument from textual data. The texts, he thinks, provide us with actual cases where all of the three possibilities mentioned above have occurred. As for the abrogation of the recitation of the text but not the rule contained in the text, we have clear evidence of this in 'Umar's saying, "The revealed Scripture once contained the words, 'If the elderly man and woman commit adultery, stone them definitely as a warning from God and His messenger.'" The recitation of this verse was abrogated, so that it no longer appears in the compiled text; but the rule itself was not abrogated. As for abrogation of the rule but not the recitation, instances of this may be found in the verse that requires that the waiting period for a woman whose husband has died be a year and the verse that deals with the bequest for parents. In both cases, the rule contained within the verse was abrogated, but not the recitation of the verse. Finally, as for the simultaneous abrogation of the recitation and of the rule, we have an example of this in 'Ā'isha's statement, "It was once revealed that ten sucklings were forbidden, but this was abrogated by [the Prophet's mention of] five." Thus the Qur'ānic text as finally compiled nowhere speaks of ten forbidden sucklings, so that both a verse and the rule contained in it must be regarded as having been abrogated.

Against these arguments the opposition marshals the following counter-arguments. The rule contained in the meaning of a text together with the recited text itself constitutes an indivisible unity much like that represented by knowledge together with scholarship or motion together with the moving object or explicit meaning together with implied meaning. In none of these cases can one entity be separated from the other. Furthermore, the abrogation of a rule but not of the recitation creates a situation of confusion. Since the text remains, people get the impression that the rule is also still in effect when in fact it is not. The text thus engenders ignorance in the minds of people, a thing that no text embodying divine revelation would do. Finally, abrogation of the recitation but not of the rule results in the following two absurdities: the abrogation of the recitation gives the impression that the rule is abrogated, thus promoting ignorance, and, since it has no discernible justification, it amounts to frivolity on the part of the Legislator.

Āmidi responds as follows. The recitation of a text and the rule contained within its meaning are not tied to each other in the manner of the various pairs of things mentioned above. What is recited is in the nature of a sign that points to the rule; it can disappear while the rule remains or vice versa. It does not, in other words, follow from the disappearance of the recited text

that the rule must also have disappeared. As for the claim that the continuing recitation of a text gives the impression that the rule contained in its meaning is still operative or that the abrogation of recitation gives the impression that the rule ceases to be operative, this is not true among qualified mujtahids who are aware of a variety of indicators that have a bearing on a particular rule, including indicators of abrogation. A mujtahid, as we have noted throughout this book, never forms an opinion on the basis of an individual datum considered apart from the larger context. Finally, to those who insist that God's actions always have a justification (a view Āmidī that does not, let us remember, share) it may be said: his abrogating the recitation of a text but not the rule contained in its meaning could have a justification that we simply have not yet discovered. This last point presupposes that the justification of an action is not immediately apparent but must, like most things, be discovered through rational reflection.

The seventh controversy is primarily concerned with the abrogation of what a text signifies. Here, however, it is not a rule that is being considered as subject to abrogation but rather a meaning that constitutes a state of affairs. It is important here to remember that the Arabic term I translate in this book as "report," *khābar*, designates in Islamic scholarly usage one of two principle categories of speech, the other being *inshā'*. The linguistic form that most typically conveys a rule of law, the imperative form of the verb (*if'al*), belongs in the latter category. The texts from which mujtahids draw rules embrace both categories of speech: a saying of the Prophet, for example, that contains the *if'al* form and thus constitutes *inshā'* is embodied within a larger unit of speech that constitutes *khābar*: whatever the Prophet utters in the way of *inshā'* must, of course, be reported by someone in a larger statement that begins with "The Prophet said. . . ."

The issue in the seventh controversy is thus whether an *assertion*, as opposed to a command, can be abrogated or—to use a translation of *naskh* perhaps more suitable in this context—rescinded. A report is best understood in this context as an utterance that asserts something: *khābar* is assertoric speech, *inshā'* is nonassertoric speech. Certain assertions, such as the assertion that God exists, are immutable: they can never be rescinded. Other assertions, such as the assertion that Zayd is a believer, are subject to change. It is the latter that are at issue in the seventh controversy. Is it possible that the Legislator might rescind assertions of this kind? Some jurists answered in the negative, others in the affirmative, while a third group considered that such assertions might be rescinded only if they assert what is yet to be as opposed to what is or has been. Āmidī opts for the second view for reasons I shall not here attempt to explain.

It is not clear whether the abrogation of rules is at issue in the seventh controversy. Rules, it seems, are normally expressed by means of nonassertoric speech, utterances that take the form of a command by employing the *if^cal* form along with other expressions. But a rule may in principle be expressed by means of assertoric speech: the statement "Stealing is forbidden" is certainly an instance of assertoric speech. And yet such statements are rare in the texts that mujtahids employ. In view of this rarity it is difficult to determine exactly how the seventh controversy impinges upon the actual work of formulating the law. It seems to be included in Āmidī's account only because it has a connection of sorts with the subject of abrogation. Its practical importance may be doubted.

With the eighth through the fourteenth controversies we come to a cluster of controversies—seven in all—concerned with the central question: what may be abrogated by what? In all cases it is the abrogation *of rules* that is under consideration. But since rules come to light through indicators they may be classified in accordance with the classification of the indicators themselves. Such a classification gives rise to the following questions:

1. Is it possible for a rule found in a Qur'ānic text to be abrogated by another Qur'ānic text?
2. Is it possible for a rule found in a Qur'ānic text to be abrogated by a *mutawātir* Sunnaic text?
3. Is it possible for a rule found in a Qur'ānic text to be abrogated by a non-*mutawātir* Sunnaic text?
4. Is it possible for a rule found in a *mutawātir* Sunnaic text to be abrogated by another *mutawātir* Sunnaic text?
5. Is it possible for a rule found in a *mutawātir* Sunnaic text to be abrogated by a non-*mutawātir* Sunnaic text?
6. Is it possible for a rule found in a non-*mutawātir* Sunnaic text to be abrogated by another non-*mutawātir* Sunnaic text?
7. Is it possible for a rule found in a non-*mutawātir* Sunnaic text to be abrogated by a *mutawātir* Sunnaic text?
8. Is it possible for a rule found in a Sunnaic text (whether *mutawātir* or non-*mutawātir*) to be abrogated by a Qur'ānic text?
9. Is it possible for a rule (however derived) to be abrogated by the Ijmā'?
10. Is it possible for an Ijmā'-based rule to be abrogated (by whatever means)?
11. Is it possible for a rule (however derived) to be abrogated by an analogy?
12. Is it possible for a rule based on an analogy to be abrogated (by whatever means)?

I have put these questions in an order slightly different from Āmidī's so as to make their interrelationships clearer. I have also phrased some of these questions in a language that does not precisely reflect Āmidī's own language, although it does reflect his intentions. For example, rather than ask whether it is possible for a rule found in a Qur'ānic text to be abrogated by another Qur'ānic text, he asks simply whether it is possible for the Qur'ān to be abrogated by the Qur'ān (*hal yajūzu naskhu 'l-qur'āni bi'l-qur'ān*). Similarly, he asks whether it is possible for the Qur'ān to be abrogated by a *mutawātir* Sunna, and so on. I have not, however, inserted the phrase "rule found in" in the second term in each question. One can, of course, ask whether it is possible for a rule found in a Qur'ānic text to be abrogated (i.e., replaced) by a rule found in another Qur'ānic text; but, as we have learned, a rule may be abrogated without being replaced by another rule.

The issues that these questions raise are reminiscent of issues relating to indication of specific reference (*takhsīs al-ʿāmm*), which were considered in chapter 8 in Part II.¹⁷ The reader may wish, for purposes of comparison, to refer back to the earlier passage while reading the following pages. Among the first things to become apparent from such a comparison is the absence, in the controversies over abrogation-related issues, of any concern with purely rational indicators as possible indicators of an abrogation. It was no doubt taken for granted by Muslim jurists that, if rules themselves cannot be based on rational indicators, then neither can the abrogation of rules. There are also other important contrasts between the earlier controversies and the ones here to be considered. These I shall leave it to the reader to observe.

As we noted earlier in this chapter, Āmidī's definition of abrogation leaves open the question of what may abrogate what: it contains no phrase that reflects the majority view of abrogation as limited to the domain of Qur'ānic and Sunnaic texts. Since this limitation arises out of deliberation over the last four of the above-stated twelve questions, I shall begin with the controversies prompted by these questions (the eleventh through the fourteenth controversies in the *Ihkām*), thus reversing Āmidī's order of treatment. This will enable us to understand on what grounds, or for what reasons, abrogation is limited to Qur'ānic and Sunnaic texts before consideration the further limitations to which it is subject.

Why cannot, according to the majority view, an Ijmāʿ-based rule be abrogated?¹⁸ Before considering Āmidī's answer to this question, it is important that we recall the function of the Ijmāʿ: it gives finality to otherwise tentative opinions. An Ijmāʿic consensus emerges out of the opinion-forming process. When all mujtahids of a generation, working independently of each other, arrive at the same opinion, their consensus puts a stamp of inerrancy upon

an opinion that, considered as the result of purely individual endeavor, would otherwise be regarded as quite fallible and tentative. Since the *Ijmā'* thus emerges out of the endeavors of individual mujtahids and since their formulation of the law is always based on their investigation of textual or paratextual indicators, the *Ijmā'* always has some sort of basis in texts. It never innovates, according to mainline thinking. Therefore, a rule that receives the sanction of the *Ijmā'* is in a certain sense also a rule contained within the meaning of the texts or derived from that meaning by way of analogy.

One may wonder, then: why speak at all of *Ijmā'*-based rules? Is not the abrogation at issue here in the final analysis the abrogation of a rule embedded in a text? The reason for speaking of a rule as *Ijmā'*-based and for asking the question whether such a rule may be abrogated is that the *Ijmā'* is the decisive point of reference in determining whether the rule is valid and operative. Where an *Ijmā'*ic consensus exists and is known to mujtahids of future generations, those mujtahids will appeal to it to justify their adherence to the rule, not to the ambiguous indicators upon which the consensus is based. Where there is no such consensus, the mujtahids must, of course, rely upon the ambiguous indicators, and in this case a variety of opinions will probably emerge and each mujtahid (along with his followers) will adhere to his own opinion. We must also take into account situations in which the original indicators upon which an *Ijmā'*ic consensus is based are not known at all to future generations or have disappeared. In such situations the future generations have only the consensus to work with.

An individual mujtahid may, let it be kept in mind, treat a rule formulated by another mujtahid as inoperative *for him* without regarding the rule as abrogated. A rule formulated by an individual mujtahid is always tentative, being based on a fallible interpretive endeavor; other mujtahids may or may not accept it, depending on where their own endeavor leads them. A mujtahid can, of course, reject a rule formulated by another mujtahid on the ground that that rule was (in the view of the first mujtahid) abrogated. In this case, he would be accepting part of the interpretive work of the other mujtahid—agreeing with him that the rule did indeed exist at one time—while contending, in opposition to the other mujtahid, that the rule was subsequently abrogated.

Why, then, may an *Ijmā'*-based rule not be abrogated? By what, asks Āmidī, could it be abrogated? By a Qur'ānic or Sunnaic text? No, because an abrogating text must, according to a rule we considered earlier, lag behind the abrogated rule in time and all Qur'ānic and Sunnaic texts existed before the period of *Ijmā'*-making, that is to say, the postprophetic era, had begun. Here again we must be certain that we understand correctly the function of

the Ijmāʿ. An Ijmāʿic consensus does not introduce a rule that did not exist, at least latently, in the prophetic period; to the contrary, it guarantees that a rule is properly rooted in the prophetic period. On the other hand, to say that a rule is Ijmāʿ-^c-based is to say that the rule was valid *at the end of* the prophetic period, that it is part of the divine law in its final form, which it assumed after all the divinely ordained abrogations had taken place. The Ijmāʿ^c, being an exclusively postprophetic phenomenon, only establishes rules that are valid in the postprophetic period, and only rules that were valid at the end of the prophetic era are valid in the postprophetic era. This means that no Qurʾānic or Sunnaic text can possibly arise in order to abrogate an Ijmāʿ-^c-based rule, since such a text can arise only within the prophetic period. Might a rule established on the basis of an Ijmāʿic consensus then be abrogated by another consensus? No, since the second consensus would have to emerge out of deliberation over an indicator of abrogation that had not existed when the first consensus was formed; and there is nothing in the postprophetic period that could provide such an indicator. We are then left with analogy, but a rule established by consensus cannot be abrogated by an appeal to analogy, since this method of reasoning is an individual endeavor whose results do not enjoy finality or inerrancy.

But what of the abrogation of a rule by a consensus?¹⁹ Why is this not possible? The bottom line in Āmidī's answer is, as nearly as I can tell, that whatever the basis of the rule itself may be—a Qurʾānic or Sunnaic text, an Ijmāʿic consensus, or an analogy—any consensus to the effect that the rule was abrogated must have some sort of basis such as a Qurʾānic or Sunnaic text and that it is this basis that is the effective abrogating factor, not the consensus itself. The force of the argument is, however, not entirely clear to me. I gather that Āmidī would not deny that it is possible for an agreement among mujtahids to occur to the effect that a certain rule was abrogated during the prophetic period, that it was not part of the divine law in its final form. If individual mujtahids can entertain an opinion to this effect, it must surely be possible for an Ijmāʿic consensus to arise that endorses the opinion. One thing is sure: the consensus cannot introduce an abrogation that did not occur during the prophetic era.

In turning to Āmidī's discussion of the questions of whether a rule arrived at by way of an analogy may be abrogated and whether the abrogation of a rule may occur by way of an analogy,²⁰ we encounter considerations that are not easily understood before the subject of the appeal to analogy has been investigated. Since this has yet to be done (and will in fact be done in the next chapter), I shall not here attempt to explain Āmidī's arguments for his position on these questions but shall merely state his position without comment.

If the analogy has a strong textual basis of the sort to be considered in the next chapter, then we may consider the text as playing the crucial role in the sense that the abrogated rule is really tantamount to a rule found in the text or that the factor that abrogates the rule is really a textual indicator. But if the analogy rests upon a consideration that the mujtahid has arrived at on his own through a process of reasoning, then a rule arrived at by way of such an analogy may not be abrogated, nor may the analogy serve to abrogate some other rule.

We may now concern ourselves with the controversies in which abrogation within the domain of Qur'ānic and Sunnaic texts is at issue. It will be a useful procedure to begin by noting which of the remaining eight of the questions listed above—the first through the eighth—were not an occasion for controversy. These were the first, fourth, fifth, sixth, and seventh. These five questions were all, according to Āmidī, unanimously answered in the affirmative (among those jurists, of course, who accepted the notion of abrogation). Thus a rule found in a Qur'ānic text may be abrogated by another Qur'ānic text, a rule found in a *mutawātir* Sunnaic text may be abrogated by another *mutawātir* Sunnaic text or by a non-*mutawātir* Sunnaic text, a rule found in a non-*mutawātir* text may be abrogated by another non-*mutawātir* Sunnaic text or by a *mutawātir* Sunnaic text. All this is agreed upon.

The real issues thus are whether it is possible for a rule found in a Qur'ānic text to be abrogated by a *mutawātir* Sunnaic text (tenth controversy), whether it is possible for a rule found in a Qur'ānic text to be abrogated by a non-*mutawātir* Sunnaic text, and whether it is possible for a rule found in a Sunnaic text (whether *mutawātir* or non-*mutawātir*) to be abrogated by a Qur'ānic text (ninth controversy). Alongside each of these issues, all of which have to do solely with what is possible on strictly rational grounds, is an issue having to do with what is actually the case. This issue arises, of course, only if the controversy over possibility has been resolved in favor of possibility. That is to say, once it has been determined that a particular sort of abrogation—say, the abrogation of a rule found in a Qur'ānic text by a *mutawātir* Sunnaic text—is possible on rational grounds, then one must take up the issue of whether this sort of abrogation, given that it is possible, has actually occurred and whether instances of it can therefore be found in the law. If we combine the three issues having to do with what is possible with the three correlative issues having to do with what is actually the case, we end up with six issues. In fact, a seventh emerges. Although jurists who accepted the notion of abrogation agreed upon the possibility of abrogation of a rule found in a *mutawātir* Sunnaic text by a non-*mutawātir* Sunnaic text, they were not in agreement as to whether actual

instances of such abrogation are to be found in the law. This issue gives rise to Āmidī's eighth controversy.

It will be noted that Āmidī records no controversy that takes up either the issue of whether it is possible for a rule found in a Qur'ānic text to be abrogated by a non-*mutawātir* Sunnaic text or the issue of whether, given that this abrogation is possible, actual instances of it are to be found in the law. He does, however, give us reason to suppose that these issues were debated and suggests what the positions taken on them might have been, as I shall explain.

Out of the controversies recorded by Āmidī certain majority positions emerge against which a dissenting minority must attempt to make its case. These majority positions are as follows:

1. That it is possible for a rule found in a Qur'ānic text to be abrogated by a *mutawātir* Sunnaic text. Those who hold this majority position disagree, however, as to whether this sort of abrogation actually occurs in the law, and no majority position on this latter issue seems to arise. Āmidī himself agrees that this sort of abrogation is possible but seems to be noncommittal on the question of whether it actually occurs.
2. That not only is it possible for a rule found in a *mutawātir* Sunnaic text to be abrogated by a non-*mutawātir* Sunnaic text (a point on which all jurists who accept the notion of abrogation agree) but also actual instances of this sort of abrogation occur in the law. While accepting the consensus in favor of possibility, Āmidī seems unconvinced of the majority position. His own position on the issue of actual occurrence seems to be a noncommittal one.
3. That it is possible for a rule found in a Sunnaic text to be abrogated by a Qur'ānic text and that, furthermore, this sort of abrogation actually occurs in the law.

From these majority-supported affirmations a further affirmation may, it seems to me, be extrapolated—that it is possible for a rule found in a Qur'ānic text to be abrogated by a non-*mutawātir* Sunnaic text, although no actual instances of such abrogation exist. The possibility (as opposed to actuality) of such abrogation follows from two points admitted in the above affirmations: that it is possible for abrogation to take place across the two basic categories of texts (Qur'ānic and Sunnaic) and that it is possible (though there are no instances where this actually happens) for a rule found in a text of certain authenticity (*mutawātir*) to be abrogated by a text of only probable authenticity.

From the last sentence in the preceding paragraph it is clear that two fundamental issues underlie the controversies here under consideration: whether abrogation may take place across the two basic categories of texts

(that is to say, whether a rule contained in a Qur'ānic text may be abrogated by a Sunnaic text and vice versa) and whether abrogation of a rule found in a text whose authenticity is certain by a text whose authenticity is merely probable has actually occurred in the law (the theoretical possibility of such abrogation being agreed upon). I shall begin with those controversies in which the first of these fundamental issues is involved—the controversy over the issue of whether a rule found in a Sunnaic text may be abrogated by a Qur'ānic text (the ninth controversy in Āmidī's own numbering) and the controversy over the issue of whether a rule found in a Qur'ānic text may be abrogated by a *mutawātir* Sunnaic text (Āmidī's tenth controversy). Then I shall turn to the controversy that relates to the second of the fundamental issues—the controversy over the issue of whether actual instances exist in the law in which a rule found in a *mutawātir* Sunnaic text has been abrogated by a non-*mutawātir* Sunnaic text (Āmidī's eighth controversy).

Is it, then, possible for a rule found in a Sunnaic text to be abrogated by a Qur'ānic text?²¹ Shāfi'ī is reported to have held that this is not possible, although the majority of Ash'arīs, Mu'tazilis, and *fuqahā* maintain not only that it is possible but also that there are instances in the law where this sort of abrogation has actually occurred. That such abrogation is possible should, according to Āmidī, be obvious to anyone who reflects for only a moment upon a basic point he has emphasized numerous times in the *Ihkām*: the Qur'ān and the Sunna are co-equal as repositories of divine revelation in the specialized sense of that term defined earlier in this book (the corresponding Arabic term is *tanzil*). There is therefore no reason why it should not be possible for one to abrogate rules contained in the other. Revelation can surely abrogate revelation.

But does not Qur'ān 16:44 (“We sent the Remembrance down to you that you may make clear to mankind what was sent down to them”) make it clear that the Sunna constitutes an elucidation of the Qur'ān? How can it be an elucidation of the Qur'ān if it is subject to abrogation by the Qur'ān? In this question we have, no doubt, the primary reason why some jurists might be reluctant to allow abrogation of the Sunna by the Qur'ān, a reason having to do with a special role of the Sunna as supplier of details for the implementation of general principles set forth in the Qur'ān. Indeed, this view of the relationship of the Sunna to the Qur'ān has always been common among Muslims. But, says Āmidī, we must understand what the true intended meaning of Qur'ān 16:44 is. What the phrase “that you may make clear to mankind what was sent down to them” really tells us is that the Prophet *conveys*, effectively gets across, to mankind what is revealed to him. Now this conveying to mankind of revelation is a general thing that includes the conveying of both

Qur'ānic and non-Qur'ānic revelation (i.e., the Sunna). However, even if we accept the interpretation that makes the Sunna the elucidator of the Qur'ān, this still does not mean that everything that emanates from the Prophet in the way of Sunna constitutes elucidation of the Qur'ān. Some parts of the Sunna in fact themselves require elucidation.

But if rules contained within the Sunna were abrogated by the Qur'ān, would this not destroy the confidence of people in the Sunna—that is to say, in the authority of the Prophet's sayings and deeds—thus undermining the Prophet's mission and contradicting Qur'ān 4:64 (“We never sent a messenger except in order that he be obeyed”)? Yes, says Āmidī, if we suppose that the Sunna has its origin in the Prophet himself and is not a revelation from God. But we know that it is in fact a revelation, as Qur'ān 53:3 (“Nor does he speak out of [his own] desire”) indicates. Furthermore, if abrogation of the Sunna by the Qur'ān was impossible because it would undermine confidence in the Sunna, then the same would have to be said of the abrogation of the Qur'ān by the Qur'ān and of the Sunna by the Sunna. Abrogation, it must be emphasized, does not indicate dissatisfaction with a rule on God's part. Rather, it indicates that God did not intend that the rule should be operative at a later time, the time of abrogation. God's abrogation of a rule thus does not imply a repudiation of the rule.

As for instances of the actual occurrence of abrogation of rules found in Sunnaic texts by the Qur'ān, Āmidī mentions the following. (1) The Prophet made peace with the Meccans in the year of Hudaibīya on condition that if any of their people surrendered to him he would return that person to them. Then a woman came to him from Mecca, and God revealed Qur'ān 60:10 (“When believing women come unto you as emigrants, test them.... If you know them to be true believers, return them not to the unbelievers”). (2) The rule requiring people to face Jerusalem when performing the *salāh*-prayer was a Sunna rule. It was abrogated by Qur'ān 2:149–150 (“Turn your face toward the Holy Mosque”). (3) Sexual intercourse during the nights of Ramadān was at first forbidden by a Sunnaic rule; this rule was abrogated by Qur'ān 2:187 (“So have intercourse with them”). (4) The fast of ‘Āshūrā’ was required by a Sunnaic rule; this obligation was abrogated by Qur'ān 2:185, which established the fast of Ramadān.

But is it not possible that the original rule in all these cases was established by means of a Qur'ānic verse whose recitation was abrogated but not the rule itself? This question demonstrates some of the consequences that the notion of abrogation of recitation of a Qur'ānic text but not of the rule contained in its meaning could have in Muslim dialectic. If the Prophet said or did something that established a rule, one who accepted this notion could postulate a

suppressed Qur'ānic text upon which the Prophet's saying or act was based. The notion of abrogation of recitation but not of a rule could thus undermine the importance of the Sunna or could be a weapon in the hands of those who wished to downplay or deny its authority, for this notion allowed one to postulate all sorts of rules that had a Qur'ānic basis known to the Prophet but not transmitted to posterity. Āmidī's reply to this query is that the Sunna does constitute in its own right an adequate indicator of the divine law, and that where a Sunnaic basis is known to have existed for rules (as in the case of all the examples given in the preceding paragraph) there is no need to postulate a putative Qur'ānic basis.

But is there not another way of looking at the matter? Perhaps the rules mentioned in the above examples were really abrogated by sayings or deeds of the Prophet (i.e., Sunna) and the Qur'ānic passages cited simply happen to agree with those sayings or deeds. Quite obviously, Āmidī's adversaries in this dialectic are trying to avoid abrogation that crosses the line between the two basic categories of texts, Qur'ānic and Sunnaic. They have first attempted to reduce the examples given to intra-Qur'ānic abrogation, and now they are attempting to reduce those examples to intra-Sunna abrogation. Āmidī's response repeats the point made in the preceding paragraph. What we have before us is the Qur'ānic verses. The Qur'ān constitutes a suitable basis for the abrogation of Sunnaic rules. There is therefore no need to postulate putative abrogating sayings or deeds of the Prophet, that is to say, sayings or deeds whose existence cannot be verified.

But what of abrogation of a rule found in a Qur'ānic text by a *mutawātir* Sunnaic text?²² Is this possible? Here again we find the great Shāfi'ī opting for impossibility, with the majority of jurists taking the opposite point of view. Shāfi'ī is this time said to have been joined by the majority of his followers, giving the impression that the controversy pitted Shāfi'īs against jurists of other schools. However, Āmidī notes that Ahmad ibn Hanbal is also said, in one report, to have shared Shāfi'ī's opinion. Those who opt for possibility are identified as Ash'arī and Mu'tazilī theologians and Mālikī and Hanafī legists. These are said to have differed on the issue of whether actual instances of abrogation of the sort here under consideration are to be found in the law.

We are still concerned here with the more fundamental issue of whether it is possible for abrogation to cross the line between the two basic categories of authoritative texts, Qur'ānic and Sunnaic. Only the direction of the abrogation has been reversed: whereas we were above concerned with abrogation of rules found in Sunnaic texts by Qur'ānic texts, here we are concerned with abrogation of rules found in Qur'ānic texts by Sunnaic texts, or, to be more

specific, by *mutawātir* Sunnaic texts. Since only *mutawātir* Sunnaic texts are at issue, we are not here concerned with the second of the two more fundamental issues mentioned above—whether a rule found in a text whose authenticity is certain can be abrogated by a text whose authenticity is merely probable. Qur’anic texts, let us remember, are also regarded as *mutawātir* so that the abrogation under consideration here pits *mutawātir* texts against *mutawātir* texts.

Āmidī joins the company of those who regard abrogation of the sort here under consideration as theoretically possible. The arguments for its possibility, he tells us, are essentially the same as used to demonstrate the possibility of abrogation of rules found in Sunnaic texts by Qur’anic texts: the two categories of texts are, as repositories of revelation (*wahy*), co-equal such that abrogation may cross the line between them. Revelation may, in other words, abrogate revelation.

Against this line of thinking the opposition marshals both arguments from texts and rational arguments.²³ All of the former employ Qur’anic texts. Again Qur’ān 16:44 (“We sent the Remembrance down to you that you may make clear to mankind what was sent down to them”) emerges as a key text. Earlier it has been argued that the elucidator (the Sunna) cannot *be abrogated* by that which it elucidates (the Qur’ān). Now it becomes apparent that the notion of the Sunna as the elucidator of the Qur’ān cuts two ways. Here it is argued that the elucidator cannot *abrogate* that which it elucidates since abrogation is something other than—something contrary to—elucidation. Āmidī’s response employs a somewhat different approach to the interpretation of Qur’ān 16:44 than that employed in the earlier discussion. “Make clear,” he now says, can be taken in its broadest possible sense to include not only making clear what words mean or refer to but also making clear that a given rule has been abrogated. The latter is no less a kind of elucidation than the former. But even if we admit that elucidation and abrogation are two different things, still the fact that the Prophet is (by virtue of the Sunna) clarifier does not exclude the possibility of his being abrogator as well.

The opposition also cites Qur’ān 16:101–2 (“And when We put a verse in place of [another] verse,—and God knows best what He is sending down—they say: ‘You are a mere forger. . . .’ Say: ‘The Holy Spirit has sent it down from your Lord in truth’”) and 10:16 (“And when Our signs are recited to them, they who look not to encounter Us say: ‘Bring a Qur’ān other than this, or alter it.’ Say: ‘It is not for me to alter it of my own accord. I only follow what is revealed to me’”). But Āmidī notes that the arguments that employ these verses are effective only on the assumption that revelation is confined to the Qur’ān and that the Sunna—the inspired sayings and acts of the Prophet—is

not a repository of revelation. Once the Qur'ān and Sunna are treated as co-equal repositories of revelation, these arguments collapse.

As for rational arguments, the opposition musters the following two: (1) The obligation to follow the Sunna is based on such passages as Qur'ān 59:7 ("And whatever the messenger gives you, take it"); therefore, the Sunna is subordinate to the Qur'ān. Now that which is subordinate cannot abrogate that to which it is subordinate. (2) Three things show that the Qur'ān carries more weight than the Sunna: the fact that the Prophet instructed Ma'ādh to judge cases first on the basis of the Qur'ān and only *thereafter* on the basis of the Sunna; the fact that the Qur'ān is a literary miracle, whereas the Sunna is not; the fact that the Qur'ān may be recited only when one is in a state of ritual purity, whereas this is not true of the Sunna. Now that which carries less weight cannot abrogate that which carries more weight.

Āmidī's response to the first of these arguments is that while it is true that the Sunna may not abrogate those Qur'ānic injunctions upon which its authority is based this is not to say that it may not abrogate other parts of the Qur'ān. Furthermore, Qur'ān 59:7 commands us to adhere to whatever the Prophet brings; therefore, if he brings words that abrogate a Qur'ānic rule, according to this verse we should accept the abrogation. Finally, it should be borne in mind that the sort of abrogation here under consideration is not an abrogation by the Sunna of the Qur'ān *per se*, but only of particular rules found in the Qur'ān. These rules are not in themselves the basis of the authority of the Sunna.

As for the second rational argument, Āmidī refutes this by calling attention to a point that he has already made here and there throughout the *Ihkām*: even though the Qur'ān is indeed miraculous, recited *verbatim* and revered as a sacred object, this does not mean that particular verses of the Qur'ān carry any more weight as an indicator of the divine law than do other things that function as indicators. Thus if a general expression in the Qur'ān is juxtaposed with a Sunnaic passage that indicates that the reference of the Qur'ānic expression is restricted, the latter is decisive in determining the scope of the reference. Also, if the literal sense of a Qur'ānic verse is in conflict with a rational principle, the latter becomes the basis for making a judgment as to the real meaning of the former. Thus it is not impossible for a rule contained within a given Qur'ānic verse to be abrogated by means of a Sunnaic text. In any case, the abrogating text is not really contradicting or negating the real import of the Qur'ānic verse but is in reality explaining that the operation of the rule contained therein was restricted to a certain time-frame.

On the issue of whether actual instances of abrogation of a Qur'ānic rule by a *mutawātir* Sunnaic text are to be found in the law, Āmidī seems to take

a noncommittal stance. This is evident from his manner of dealing with the arguments for the occurrence of such instances: he endeavors to show that they are weak. To refute arguments is one thing, but to show them to be weak is another. Sometimes, after showing certain arguments for a particular position to be weak, Āmidī proceeds to provide “reliable” (*muʿtamad*) arguments. When he does not—as is the case here—we must take his disclosure of the weakness of arguments to be his last word and his own position on the issue at hand to be a noncommittal one.

For example, it is claimed that the Qurʾānic rule permitting one to include parents and close relatives in a will was abrogated by the Prophet’s saying, “There is to be no bequeathing by will to a legal heir.” And it is claimed that the Qurʾānic rule requiring the whipping of an adulterer was abrogated by the Sunnaic passage that enjoins the stoning of an adulterer. But, says Āmidī, both of the Sunnaic texts referred to in these examples are in fact not *mutawātir* at all but rather fall in the category of “reports of individuals.” This observation takes us to the heart of the problem raised by the notion of abrogation of a Qurʾānic rule by a *mutawātir* Sunnaic text. As we have noted in an early chapter, *mutawātir* Sunnaic texts are extremely difficult to identify, if indeed they exist at all. Any mujtahid claiming to have identified such a text would be met by a host of deniers of his claim. Thus, for all practical purposes, all Sunnaic texts used by mujtahids are “reports of individuals,” and, as befits texts that fall into this category, are accompanied by scrutinizable chains of transmitters. Consequently, it becomes next to impossible to locate actual instances of abrogation of this sort so as to prove in a convincing manner that such instances exist.

We may wonder why the notion of *mutawātir* meaning (which, as we noted in an earlier chapter, is distinct from the notion of *mutawātir* texts) does not enter into the present discussion, especially since instances of *mutawātir* meaning seemed to many Muslim jurists to be more readily available. Could it not be demonstrated that a Qurʾānic rule might be abrogated by a common core of meaning found in a group of non-*mutawātir* texts of sufficient number to render the meaning *mutawātir*? From Āmidī’s silence on this question we must conclude that the question simply did not arise.

If instances of abrogation of Qurʾānic rules by Sunnaic texts of certain authenticity prove not to be forthcoming, what of instances of abrogation of Qurʾānic rules by Sunnaic texts of merely probable authenticity? Here at least we have a category of texts that are readily identifiable, and, furthermore, this sort of abrogation seems, as I have suggested, to have been regarded as theoretically possible. Āmidī records no controversy that focuses specifically on this question.

We may now turn to the issue of whether a rule found in a *mutawātir* Sunna text may be abrogated by a non-*mutawātir* Sunna text.²⁴ Here the concern is with texts that belong to the same category (Sunna), but are disparate when viewed from the standpoint of their authenticity. One text—the *mutawātir* text—is of unquestionable authenticity, whereas the other text is of merely probable authenticity. The term *mutawātir*, let us remember, applies to texts that, by virtue of having met certain conditions discussed in an earlier chapter, yield the *knowledge* that the words contained in the text are indeed the words of the author to whom the text is attributed. A text that is non-*mutawātir*—that is to say, one that is *khābar al-wāhid*, a report of a trustworthy individual—yields, by contrast, *opinion* to this same effect, not knowledge.

All jurists who accept the notion of abrogation agree, Āmidī tells us, that abrogation of a rule found in a *mutawātir* Sunnaic text by a non-*mutawātir* Sunnaic text is theoretically possible. Disagreement arises as to whether actual instances of such abrogation exist within the law. It may at first seem strange that there should be agreement upon the theoretical possibility of abrogation of a rule found in a text of lower-order authenticity by a text of higher-order authenticity. Precisely because there was agreement upon it Āmidī is not required, in the context of Muslim dialectic, to make a case for it. We need only reflect for a moment, however, to imagine what sort of argument he might have used if the occasion for debate had arisen. The fact that a rule is embodied in a text whose authenticity is certain does not exempt the rule from being the object of an *opinion* to the effect that it was abrogated. A text of merely probable authenticity is sufficient to give rise to such an opinion. It is important to note that the abrogation here is strictly a matter of opinion. One mujtahid may think the rule abrogated, another may not. The abrogation may not, therefore, be universally imposed on mujtahids.

Six last controversies related to the subject of abrogation now remain to be considered, the fifteenth through the twentieth in Āmidī's order of presentation. Two of these are concerned with the effect of abrogation of a rule upon other rules. Are there situations in which the abrogation of a particular rule necessitates the abrogation of some other rule? What of rules that imply other rules in the manner I have termed "congruent implication"?²⁵ To take an example considered in a previous chapter: most Muslim jurists considered that the Qur'anic words "Say not 'Fie' to them" (17:23) could be construed, on the basis of a *fortiori* reasoning, as implying that one was not to curse or strike one's parents. If we take the Qur'anic words as indicative of a rule forbidding the saying of "Fie" to one's parents, then we have a rule that implies other rules, forbidding the cursing or striking of one's parents.

Among the Muslim jurists, this relationship of implication raised two questions: was it possible for the explicitly stated rule to be abrogated without a corresponding abrogation of the implied rule, and was it possible for the implied rule to be abrogated without a corresponding abrogation of the explicitly stated rule? On the first question, the majority of jurists took the view that the abrogation of an explicitly stated rule carries with it the abrogation of any implied rule. The implied rule, it was argued, is subordinate to and dependent upon the explicitly stated rule in the sense that if one did not have the explicitly stated rule one could not have any awareness of the implied rule. What is dependent upon something else in this way stands or falls with that upon which it is dependent. As for the second question, Āmidī does not indicate a majority position but simply cites the Muʿtazilī jurist Abuʾl-Husayn al-Basrī as having taken the position that the abrogation of the implied rule necessitates the abrogation of the explicitly stated rule. His argument, Āmidī tells us, was that the implied rule serves the same purpose as the explicitly stated rule; since the abrogation of the implied rule amounts to a rescinding of this purpose, the explicitly stated rule becomes, as a result, purposeless and must therefore be treated as having been abrogated.

Āmidī himself adopts an opposing point of view on both of the above-stated questions. He acknowledges that if one reduces congruent implication to a kind of analogy (as some jurists do) one must indeed regard the abrogation of the explicitly stated rule as entailing the abrogation of the implied rule, although there would be no reason to regard the abrogation of the implied rule as entailing the abrogation of the explicitly stated rule. However, many jurists did not agree to such reduction, and Āmidī insists that if congruent implication is *not* to be reduced to a kind of analogy one can only regard it as entailing two separate and distinct indicators, despite a degree of dependency of one upon the other. Thus the Qurʾānic words “Say not ‘Fie’ to them” are an indicator that saying “Fie” to one’s parents is forbidden, while at the same time constituting an indicator that cursing one’s parents is forbidden. These two indicators give rise to two distinct rules. There is no reason to believe that the abrogation of one necessitates the abrogation of the other. If one argues, as does Abuʾl-Husayn, that the two rules serve one and the same purpose, one is in effect reducing congruent implication to a kind of analogy. The point, says Āmidī, is that the two rules do not necessarily serve one and the same purpose; they can quite conceivably serve different purposes. As for the dependency factor, this relates entirely to the functioning of the two indicators: it is true that the functioning of one is dependent upon the other. But this is not to say that there is a dependency of one rule

upon another. Each of the two rules stands on its own feet as an independent rule with its own purpose to serve.

But what of cases where the relationship between two rules is clearly one of analogy?²⁶ The abrogation of a rule that is put forward by a mujtahid on the ground of its being analogous to a preestablished rule does not, as we have noted, necessitate the abrogation of the preestablished rule itself. But what about the reverse? Does the abrogation of the preestablished rule necessitate the abrogation of the analogous rule? While certain Hanafīs gave a negative answer to this question, all other jurists answered in the affirmative. The affirmative position is the one Āmidī adopts, his argument being that the abrogation of the preestablished rule renders the occasioning factor behind the rule inoperative, and without this occasioning factor no analogous rules have any validity. Thus if the rule forbidding the drinking of grape-wine was abrogated and it had been determined that the factor that had originally occasioned this rule was the intoxicating property of grape-wine, then this property would no longer be a valid basis for pronouncing other similar beverages forbidden. Rules forbidding the drinking of date-wine would, accordingly, have to be considered as abrogated.

The seventeenth controversy raises an issue that seems to have more theoretical than practical importance.²⁷ When an abrogation is revealed to the Prophet but he does not immediately convey it to the community, does the abrogation become effective for the community at the time of its revelation or only after it has been conveyed to the community? Some Shāfi'īs, says Āmidī, held that the abrogation becomes effective at the time of revelation, while other Shāfi'īs held that it becomes effective at the time of its conveyance to the community. Thus the controversy seems to have arisen within the Shāfi'ī school. The Hanafīs and Hanbalīs, according to Āmidī, adopted the latter of the two positions. Those Shāfi'īs who regarded abrogation as effective at the time of revelation advanced arguments that sought to assimilate abrogation to certain kinds of unilateral transactions in which effectiveness does not depend upon an awareness of the transactions on the part of the second party. Āmidī goes into some detail to show why these arguments are fallacious. His main point is that they do not take into account the distinctive character of abrogation.

Āmidī cites two arguments in support of the view that abrogation becomes effective only after the Prophet has communicated it to the community. First, the Qur'ān indicates very strongly that individuals are held accountable to God only through the word of prophets (Qur'an 17:15, 4:165, 28:59). If abrogation is effective immediately upon being revealed to the Prophet, then individuals are held accountable before the word of the Prophet has come to them.

Second, if an individual acted in accordance with an abrogation before the abrogation was actually communicated to him, he would be deemed disobedient by a judge. For example, if he performed the *salāh*-prayer facing Mecca before the abrogation of the rule requiring one to face Jerusalem, he would be deemed disobedient. An abrogation, Āmidī insists, has the effect of removing obligations and replacing them with other obligations; but examples from the time of the Prophet show that these effects did not obtain until the abrogation was communicated to the community. Consequently, we can hardly regard the abrogation as effective prior to its being communicated to the community. One such example pertains to the people of Qubā. As soon as they heard that the obligation to face Jerusalem during *salāh*-prayer had been abrogated and replaced by the obligation to face Mecca, they proceeded to change the direction of their prayer. However, the Prophet counted as valid the prayers they had performed while facing Jerusalem before they heard of the change, even though these prayers had been performed after the change had been revealed to the Prophet.

The eighteenth and nineteenth controversies are concerned with the question of whether certain legislative acts that have a bearing upon existing rules are to be regarded as abrogations of those rules or merely as subsequent legislative acts that leave the existing rules intact. One such legislative act is the addition of new requirements to the requirements already specified in the existing rule.²⁸ Āmidī gives the example of the *salāh*-prayer. According to the existing rule, every believer must perform a certain number of *rakʿas* during each prayer. (A *rakʿa* consists of bowing while in an upright position followed by two prostrations.) The number of required *rakʿas* differs with each of the five daily prayers. The question that presents itself to the Muslim jurists is whether, if the Legislator added to the two *rakʿas* required for the morning prayer a third required *rakʿa*, he would in effect be abrogating the existing rule that stipulates two required *rakʿas* and replacing it with a new rule stipulating three required *rakʿas*. The same question can be phrased with reference to another example. If the Legislator added twenty whiplashes to an existing punishment of eighty lashes, would he in effect be abrogating the rule requiring eighty lashes and replacing it with a new rule requiring a hundred lashes?

The Shāfiʿīs, the Hanbalīs, and a party of Muʿtazilīs, says Āmidī, took the view that such additions do not constitute abrogation. In this view, an addition to an existing rule constitutes in and of itself a separate rule, which supplements the existing rule. Or to employ, not inappropriately I trust, a term from modern legislative jargon: the new rule constitutes an amendment to the older rule. The Hanafīs rejected this way of thinking: the new rule, in

their view, abrogated the existing rule by replacing it. The new rule, in other words, by adding a requirement to existing requirements incorporated the old rule into itself such that the totality of old and new requirements constituted a single, novel entity. By incorporating the old rule into itself, it abolished the old rule as an independent entity.

Some jurists refrained from making blanket statements on this issue, preferring to draw a distinction between particular cases. An addition might constitute an abrogation in some cases but not in others. Some, for example, said that an abrogation occurs only when the addition overturns a counterimplication. Thus if the Legislator adds to the rule requiring that *zakāh*-tax be levied upon free-grazing sheep the requirement that the tax also be levied upon stall-fed sheep, he is overturning a counterimplication of an existing rule. It may be recalled from our earlier discussion of counterimplication that most jurists regarded the Prophet's words, "*Zakāh*-tax is due upon free-grazing sheep," as implying that the tax was *not* due upon sheep that are not free-grazing (stall-fed sheep).²⁹ Since a counterimplication is intimately bound up with the rule that carries it, any legislative act that set it aside seemed, to the jurists under consideration, to rob the rule itself of its full force and thus, in effect, to abrogate it.

The Mu'tazili jurists al-Karkhī and Abū 'Abd Allāh al-Basrī drew a somewhat different distinction. If the addition entailed a definite novelty, it constituted an abrogation; but if it only made explicit what had always implicitly been the case, it did not. For example, if the Legislator added banishment to a certain existing penalty (by declaring, for example, that the thief, in addition to having his hand cut off, should be banished from the land), the addition constituted an abrogation; but if he added to a rule of modest dress requiring that the thighs be covered the specification that the knees must be covered, the addition would not constitute an abrogation, since the covering of the knees helps to assure that the thighs will be covered and will have, for that reason, always been necessary for proper compliance with the existing rule. Or if the Legislator adds to the rule requiring that the hand of the thief be cut off the specification that, in cases where both hands have been cut off due to previous thefts, a foot should be cut off, he is only making provision for cases where amputation of a hand cannot be implemented but where a penalty is in order: this provision will also have always been necessary for proper compliance with an existing rule. In neither of these two cases has a genuine novelty been introduced.

Another Mu'tazili jurist, 'Abd al-Jabbār, held that if the addition has the legal effect of rendering compliance with an existing rule null and void if not accompanied with compliance with the additional requirement,

then it constitutes an abrogation. For example, if the Legislator adds a *rakʿa* to the two *rakʿas* of the morning prayer he renders the prayer void if only two *rakʿas* are performed; accordingly, he has in effect abrogated the rule requiring two *rakʿas*, replacing it with a new rule. The same is true if the Legislator adds an option to the options entailed in an existing rule that imposes an option-bound obligation. Under the existing rule, a person becomes culpable if he omits all options specified in the rule. The addition of a new option eradicates this legal effect: by virtue of the new option, the person cannot be held culpable by virtue of having omitted all of the originally specified options since he may have satisfied the requirement of the law by having performed the new option. On the other hand, all additions that do not have legal effects such as these do not constitute abrogation. Thus if the Legislator adds twenty lashes to an existing penalty of eighty lashes and if a magistrate inflicts eighty lashes but not the additional twenty, the magistrate has inflicted a valid penalty while neglecting to apply an additional penalty. In this case, the new requirement is independent of the previous but still operative requirement.

Ghazālī is represented as having made essentially the same distinction but in slightly different terms. If the addition forms a unity together with the rule to which it has been added such that neither can be detached from the other, it constitutes an abrogation; otherwise, it does not.

Āmidī himself opts for the view of Abu'l-Husayn al-Basrī: if an addition is *subsequent* to that to which it is added and if it definitely sets aside a rule of law, it constitutes an abrogation; otherwise, it does not. In order to determine whether the abrogation sets aside a rule of law, one must carefully examine the textual indicator of the addition in order to determine whether the indicator is such as to allow a mujtahid to postulate an abrogation. This presumably means that the indicator must be capable of sustaining on its own the entire rule resulting from the addition, not just the additional element itself. Only if this is the case can an abrogation be postulated.

What follows in the *Ihkām* is not an account of a dialectic but a further exploring of the positions of different jurists on particular subsidiary questions, relating to specific cases or passages in the authoritative texts. I shall not take up my reader's time with these questions.

The nineteenth controversy takes up two interrelated questions,³⁰ both of which have to do with removing something—a requirement or a condition—upon which the validity of a legal act depends. The first question is this. If the Legislator abrogates certain requirements among a body of requirements that together constitute a legal act but says nothing about the other requirements, are we to consider the entire body of requirements—and thus the rule that

originally established them—as having been abrogated? In other words, does the abrogation of the part constitute an abrogation of the whole? Karkhī and Abū'l-Husayn al-Basrī said that it does not, while others—whom Āmidī identifies as being among the speculative theologians (*mutakallimūn*)—insisted that it does. Included among the latter are 'Abd al-Jabbār and Ghazālī.

Āmidī's own position on this question is that the abrogation of the part does not constitute an abrogation of the whole. He uses the *salāh*-prayer as an example. If the Legislator abrogates two of four required *rak'as* in a prayer, we have no grounds for regarding the remaining *rak'as* as having been abrogated. A rule, it appears, is in Āmidī's view divisible for purposes of abrogation: a part of the rule—that is to say, certain of the requirements specified in the rule—may be abrogated, while the rest remains in force. Such abrogation is to be contrasted with the abrogation entailed in an addition. As we noted above, the addition of a fifth required *rak'a* to four existing ones *is*, for Āmidī, an abrogation since it has the effect of making the performance of only four *rak'as* invalid. Here we are concerned with a legislated subtraction: what remains after the subtraction, namely, two *rak'as*, does constitute a valid prayer.

The adversaries of this way of thinking advance a twofold objection. First of all, they insist that legal acts constitute an indivisible unity: they cannot be divided into parts, even for purposes of abrogation. One cannot apply a mathematical conception of divisibility (two is part of four) to a legal entity. But even if we admitted the possibility of such division in the legal realm, we would still have what amounts to an abrogation of the whole; for prior to the abrogation of the part, the whole constituted an indivisible entity. The abrogation of the part is thus tantamount to an abrogation of this indivisibility, this unity, and its replacement with the part. Āmidī replies to the first part of the objection by insisting that even in the realm of law two must be considered a part of four such that when two of four requirements are abrogated the other two remain. As for the second part of the objection, Āmidī agrees that prior to the abrogation of the part the whole is an indivisible entity in the sense that obedience is reckoned on the basis of compliance with every requirement; but he argues that setting aside this reckoning of obedience in favor of another does not constitute true abrogation.

The second question that arises in the nineteenth controversy is whether the abrogation of a condition upon which the validity of a legal act rests constitutes an abrogation of the obligation to perform the act. Ritual purification is, for example, a condition of a legal valid performance of the *salāh*-prayer. If the Legislator abrogates the requirement of ritual purification, has he in effect abrogated the obligation to perform the prayer? On this issue,

the jurists align themselves in the same manner as indicated above, except that ʿAbd al-Jabbār changes sides: the abrogation of the condition is not, according to him, the abrogation of the obligation to perform the prayer. Āmidī, consistent with the position he takes on the first issue, adopts this latter point of view. His adversaries against argue from the principle of indivisibility: the condition of validity constitutes along with the act of prayer itself an indivisible whole, and the setting aside of this whole is tantamount to abrogation. Āmidī's reply is the same as indicated in the previous paragraph.

The twentieth and final controversy relating to the subject of abrogation again takes up two separate questions.³¹ The first pits the Muʿtazilis against their orthodox opponents: is it possible that God should abrogate rules of law that accord with the dictates of the human intellect? To phrase the question with reference to specific examples: is it possible that God should abrogate the obligation to thank one's benefactor or the prohibition against lying? As proponents of a rationalist view of law, the Muʿtazilis were, of course, obliged to deny this possibility. God's legislative acts are necessarily in accordance with the dictates of human rationality. Since Āmidī has refuted this rationalist posture elsewhere, he simply refers his reader to the other discussion.

The second question is highly academic with little practical importance: is it possible that God should abrogate all obligations, that is to say, the entire law? Only two controversialists are identified: Ghazālī, who denied this possibility, and Āmidī himself, who affirms it. Ghazālī argued that at least one obligation could never be abrogated—the obligation to ascertain that all other obligations had been abrogated. But Āmidī insists that once the abrogation is known it may be said that all obligations have been abrogated.

Āmidī ends his discussion of abrogation with an epilogue (*khātima*) on the procedure the mujtahid should follow in attempting to determine when an abrogation has actually taken place.³² This procedure has been implicit in much of what he has hitherto said about abrogation: he is now in effect simply gathering together various points into a single coherent process. Abrogation, as we have noted, is limited to the sphere of *nass*, that is to say, of Qurʾānic and Sunnaic texts. In his study of these texts, the first sign of an abrogation that the mujtahid should look for is a contradiction between two particular texts. In a true abrogation, one text affirms a rule and the other text either indicates in some way that the rule is not operative or affirms another rule in conflict with it. Once such a contradiction is determined to exist, the mujtahid should first determine whether the two texts contradict each other in all respects or just in certain respects. If they contradict each other in all respects, then the mujtahid may proceed to his next task, determining whether the authenticity of the two texts is certain or merely probable. This

will lead to one of three results: the mujtahid will find both texts to be of certain authenticity, both to be of probable authenticity, or one text to be of certain authenticity and the other to be of probable authenticity.

If the mujtahid finds either that both texts are of certain authenticity or that both are of probable authenticity—in other words, that both belong to the same order of authenticity—then he must endeavor to determine the chronological order of the two texts. If he finds that one text came after the other, he will be obliged to treat the later text as abrogating the earlier one. If he is unable to determine the chronological order of the texts, he must then treat them as conflicting texts, following the procedures to be outlined in a later chapter. As we shall see, these procedures are designed to enable the mujtahid to weigh texts against each other to determine which carries greater weight: where one text outweighs another, the mujtahid will formulate the law on the basis of the weightier text; otherwise, he will refrain from formulating the law. Āmidī raises the question of whether it is possible for two contradictory texts to originate simultaneously in a single revelation to the Prophet. Those jurists who admitted this possibility called upon the mujtahid to treat them in the manner just indicated, that is to say, in the same manner as texts whose chronological relationship cannot be determined. Āmidī himself, however, refuses to allow this possibility.

That one text came after the other may be known either from the actual use of the words “abrogation” and “abrogated”—for example, if the Prophet said, “This abrogates that, and that is therefore abrogated”—or from the dates of the two texts, which in turn may be known either from the actual words of the texts or from the remarks of the transmitter. This presupposes that the abrogating text and the abrogated text are both equal with respect to their chains of transmitters.

If, in pondering the question of the authenticity of the two texts, the mujtahid finds one to be of certain authenticity and the other of probable authenticity, he need not concern himself about chronological order, since it will be his duty to formulate the law on the basis of the text that is of certain authenticity, no matter what the chronological order of the two texts happens to be. This is not to say that chronological order will be of no interest whatsoever. If it happens that the text that is of certain authenticity is the later one, he will necessarily treat it as abrogating the other. But the knowledge that it abrogates the other is not crucial to his decision as to which text to take as his basis for formulating the law. If the text that was of certain authenticity was determined to have come before the other text, he would still take it as the basis for formulating the law, even though he could not treat it in this case as abrogating the other.

What of two texts that contradict each other in a certain respect but not in another respect? These, says Āmidī, should be treated in the same way as two texts that contradict each other in all respects. The only reason why the mujtahid should, at the beginning of his inquiry, seek to determine whether the two texts contradict each other in all respects or just in a certain respect (or in certain respects) is presumably that it is important for him to be aware of both kinds of contradiction to enable him better to identify cases in which two texts thought to contradict each other do not in fact contradict each other in any respect. Āmidī gives the following example of two texts that contradict each other only in a certain respect—the Prophet’s sayings: “Whoever changes his religion, kill him” and “I have forbidden the killing of women.” The latter saying contradicts the former only in respect to the former’s calling for the killing of women who have changed their religion. Men who have changed their religion are presumably still to be killed. If the Prophet said, “Whoever changes his religion, spare him,” then he would be making a statement that contradicts the former of the above sayings in all respects.

ANALOGY: DEFINITION AND CONDITIONS OF VALIDITY

Our concern throughout Part II of this book has thus far been with the textual indicators of the divine law. We have considered the process of transmission of these indicators through time and the actual functioning of these indicators as means whereby the law becomes manifest to human beings. Our consideration of this functioning has taken us into the workings of the *language* of the texts, both as a bearer of explicit meaning and as a bearer of implied meaning. The rules of law that become manifest through the language of the texts may all be regarded as in some sense contained *within the meaning of the texts*.

We now turn to an indicator that I earlier described as “paratextual”—analogy. An analogy is not, for those who accept it as a valid indicator of the law, something that the mujtahid creates. To the contrary, an analogy exists apart from the mujtahid’s efforts: his task is to discover it. And he can only discover it in his pondering of texts, for it is the texts, and only the texts, that will engender it. I have purposely refrained from translating the Arabic term *qiyās* as “reasoning by analogy” or as “analogical deduction” or through a similar phrase. Such phrases focus our attention upon the human use of analogy in argumentation and interpretation. This human component is certainly part of the picture we shall be considering, and to the extent that we regard *qiyās* as a verbal noun related to the verb *qāsa* (and thus as synonymous with *qays*) translations of the sort just mentioned are indeed warranted. However, in historic usage *qiyās* has ceased to function strictly as a verbal noun: hence the appropriateness of translating it as “analogy.” I wish in what follows to place the emphasis upon analogy as an indicator of the divine law, as something the mujtahid perceives as a result of his pondering of the texts and on the basis of which he formulates the law.

Āmidī devotes an uncommonly large section of the *Ihkām* to the subject of analogy, approximately twenty percent of the entire work. He divides this section into four main parts preceded by an introduction. The general outline of the section is thus as follows.

Introduction: On the concept of analogy and its elements.

1. The conditions that an analogy must satisfy in order to be counted as a valid indicator of the law.
2. The methods for determining the factor that occasions the rule governing the principal case in an analogy.
3. The various methods of classifying analogies.
4. The controversies over the probatory value of analogy.
5. The dialectics of the use of analogy.

In order to keep my chapters to a reasonable length, I shall devote this chapter to the introduction and part 1 of Āmidī's discussion, leaving the remaining parts for the following chapters.

In his introduction,¹ Āmidī considers nine different definitions of analogy, all of which he considers unsatisfactory. These he follows with a definition of his own. The nine definitions and his critiques of them are given below. It will be noted that what some of these definitions actually define is reasoning on the basis of analogy rather than analogy as such. They thus treat the Arabic term *qiyās* as referring to a human activity. The other definitions reflect the understanding of *qiyās* mentioned above: they define it as something that exists apart from human activity, as something that mujtahids act upon.

1. *Qiyās* is "the acquisition of the truth." We can perhaps better express the import of this definition if we rephrase it as "*qiyās* is the process of acquiring the truth." "The truth" is presumably legal truth, the true law. The definition seems to reflect a point of view that saw the discovery of law in texts as a simple process in which the mujtahid simply took cognizance of what was before him; only when he sought the law beyond the limits of the text's meaning did he become actively involved in a process of acquiring the law. Whatever may have been the original thinking behind this definition, it is for Āmidī clearly faulted by the fact that in seeking the law from the texts one is very much involved in a process of actively acquiring truth. This process does not therefore distinguish *qiyās* from other indicators of the law. Furthermore, even in the case of acquisition of legal truth through *qiyās*, it is not the acquisition itself that constitutes the *qiyās*. The *qiyās* exists prior to the acquisition process and makes the process possible.

2. *Qiyās* is "an expenditure of effort in the extraction of the truth [i.e., the true law]." This definition seems to entail an assumption similar to that mentioned in the previous paragraph—only when one looks beyond the texts to discover the law does one "expend effort" and "extract truth." Accordingly, the definition is subject to the same criticisms as the previous definition.

3. *Qiyās* is "a likeness of one thing to another." While it is true that analogy that functions as an indicator of the law entails a likeness between two things,

the definition suggests that any sort of likeness constitutes such an analogy. This is, of course, not the case.

4. *Qiyās* is “an indicator that leads to the truth.” The key expression in this definition seems to be “that leads to.” In contrast to other indicators of the law that—so the definition seems to presuppose—simply lay out the truth before the seeker, *qiyās* engages the seeker in a *movement toward* the truth. The definition does, in placing *qiyās* in the category of an indicator of the law, raise it above the sphere of human activity, thus affirming its objectivity; the problem with it is that it does not adequately distinguish *qiyās* from other indicators of the divine law, since all indicators draw the seeker into a movement toward the truth.

5. *Qiyās* is “the knowledge of a thing that occurs as a result of discursive reasoning.” Again, the definition is not sufficiently specific; furthermore, it confuses the result with the thing itself. Āmidī notes that in his own view knowledge in any case does not result from *qiyās*, but only opinion.

6. *Qiyās* is “a linking of a thing to something else and an application of the rule governing that thing to the other thing” (the definition of Abū Hāshim). This definition treats *qiyās* as a human activity consisting of two phases: the “linking of a thing to something else” apparently refers to the process of discovering a feature that the two things have in common, while “an application of the rule governing that thing to the other thing” refers to what is done on the basis of the feature discovered. Āmidī considers this definition to be flawed by its use of the word “thing,” which can only be applied to existents and in consequence excludes nonexistents. (This presupposes the philosophical position that nonexistents are not things, a position argued in Islamic speculative theology.) The definition, in other words, is defective in that it does not take account of the application of rules to nonexistents. “Nonexistents” apparently has reference to the nonperformance of acts. Rules govern not only acts but also the *absence* (i.e., nonoccurrence) of acts. Failing to fulfill one’s obligation in a contract would be an example of this. Furthermore, the definition omits any reference to the occasioning factor (*‘illa*) behind the rule in question, thus implying that the rule becomes applicable to the “other thing” whether a rule-occasioning factor is present or not. It is not enough, in other words, to speak merely of linking one thing to another by virtue of a common feature: the definition must make it clear that the common feature is a rule-occasioning factor. I shall explore the notion of a rule-occasioning factor presently.

7. *Qiyās* is “the applying of a rule governing one thing to another thing on the basis of some sort of likeness between the two things” (‘Abd al-Jabbār’s

definition).² Like the preceding definition, this excludes *qiyās* that leads to a rule governing what is nonexistent.

8. *Qiyās* is “the application of a rule governing a principal case [*asl*] to a novel case [*farʿ*] because of a likeness that the mujtahid perceives between the two cases in respect to the occasioning factor behind the rule in question” (Abu’l-Husayn al-Basrī’s definition). The likeness of which this definition speaks is, of course, a likeness arising from the presence of the rule-occasioning factor in both cases. The problem with this definition is that it implies that one and the same rule is applied both to the principal case and to the novel case, when in fact what is applied to the novel case is a rule *resembling* the rule that pertains to the principal case. The definition fails to make clear the fact that *qiyās* results in a novel rule: it *adds* a rule to the existing body of rules that make up the divine law. (This criticism, it seems, would be applicable to the definitions of Abū Hāshim and ‘Abd al-Jabbār as well.) Furthermore, the inference mentioned in the definition is the result of *qiyās*; it is not itself *qiyās*. Āmidī again is seeking to place *qiyās* outside the sphere of human activity. He suggests that the definition could be improved by being reworded as follows: *Qiyās* is the likeness that exists in the reasoned opinion of a mujtahid between a principal case and a novel case by virtue of (there being present in both cases) the factor that occasions the rule governing the principal case, with the result that the inference that the rule governs the novel case follows of necessity.

9. *Qiyās* is “the relating of one known [*maʿlūm*] to another in respect to a rule’s being applicable or nonapplicable to each of them by virtue of something they have in common” (Bāqillānī’s definition). It should be noted that this definition is not speaking of one and the same rule’s being applicable or nonapplicable to both knowns but rather of *a* rule’s being applicable or nonapplicable to each of them. The definition has for Āmidī the merit of including a word, “known,” that is inclusive of both existents and nonexistents (that is to say, both actual cases and hypothetical cases). Furthermore, many of the criticisms brought against this definition are invalid, and Āmidī examines each one of them to show that this is so. However, there is still a problem with this definition—in speaking of a rule’s being applicable or nonapplicable to each of the two knowns it is implicitly speaking of two rules and is thus referring indirectly to the rule that results from *qiyās*. This puts the definition at odds with the agreed-upon principle that there should be no reference in the definition of *qiyās* to the rule that results from *qiyās* since this produces a kind of circularity. One first has to know what *qiyās* is in order subsequently to know what it produces.

Āmidī himself chooses to define *qiyās* as follows. It is “an equivalency between a novel case and a principal case in respect to a rule-occasioning factor gleaned from a rule governing the principal case.”³ This definition tells us in effect that a *qiyās* arises when the occasioning factor behind a rule governing one case is present in an equal degree in another case. It is this equivalency that constitutes the *qiyās* per se. The definition says nothing about a rule emerging that governs the new case, for this is the result of the *qiyās* and cannot, therefore, be part of its definition. It furthermore places *qiyās* outside the sphere of activity of the mujtahid who adopts the *qiyās* as the basis for a rule governing the novel case. Having given us this definition, Āmidī notes that it is immune from the charges of noninclusivity or overinclusivity that have been brought against the other definitions. Since I have not, for the sake of brevity, explored all those charges, I shall let Āmidī's definition stand as presented.

Every analogy—I shall hereafter dispense with the Arabic term *qiyās*—entails four essential constituents, called “pillars” (*al-arkān*).⁴ These are a principal case, that is to say, a case in the light of which a novel case is to be considered, a novel case, a rule governing the principal case, and a feature (*wasf*) common to the principal case and the novel case that can be shown to constitute the occasioning factor (*‘illa*, also *sabab*, *manāt*) behind a rule governing the principal case such that, through it, a rule governing the novel case may be ascertained. Āmidī lists these four constituents in two different passages.⁵ In his second listing, he changes the order somewhat and refers to the fourth of the above constituents simply as a rule-occasioning factor that is common to the two cases, not as a feature that is common to the two cases. This latter designation accords better with his own view that the rule-occasioning factor may in some cases consist of something more fundamental than a mere feature, namely, the rationale or purpose the Legislator has in mind (more on this later).

I should note that I have quite deliberately refrained from translating the Arabic term *‘illa* as *ratio legis* or *ratio decidendi*, preferring rather the translation “occasioning factor” or (in some contexts) “rule-occasioning factor.” *Black's Law Dictionary*, it is true, defines *ratio legis* as “the reason or occasion of a law,” but it seems to me that the Latin word more often conjures up the sense of “reason”: that is, in any case, its literal meaning in Latin. Furthermore, *ratio* may be too easily confused with “rationale,” and the Muslim jurisprudents unanimously draw a clear distinction between *‘illa* and *hikma*, “rationale.” A rationale may, in certain cases and in the opinion of certain jurisprudents, function as an *‘illa*, but this is not usually the case; and some jurisprudents disallow it altogether.

When the Muslim jurists speak of an *‘illa*, they usually have in mind a feature of some case under consideration. To make use of the classic example: the intoxicating quality of *khamr* (grape-wine) is the *‘illa* of the rule that prohibits the drinking of *khamr*. One could, of course, speak of the intoxicating quality of *khamr* as the reason behind the rule, but normally reasons are expressed by *that*-clauses: one says, for example, that the reason for the prohibition against *khamr* is *that* it intoxicates. A reason is something that exists in one's mind. Reasons entail objects or features in the real world; and to ask whether *‘illa* refers to a reason as such or a feature that it entails is perhaps to engage in hair-splitting. The fact that an *‘illa* may be expressed in Arabic by means of the particle *li-* suggests that "reason" or *ratio* is an appropriate translation. However, I have found it on the whole to be more congenial to my own English prose to translate it as "occasioning factor." This translation is supported by Āmidī's frequent association of the term *‘illa* with the term *bā‘ith*, which has in its usage the sense of "occasioning," or "prompting."

The first and second of the above-mentioned constituents of an analogy—that is to say, the principal case and the novel case—are, in Āmidī's terminology, designated as *asl* and *far‘*. Āmidī notes that the Muslim jurists were not in agreement on the use of these two terms. In the case of *asl*, they were divided between three different usages. While many, like Āmidī, used the term to designate an actual case, capable of serving as the starting point of an analogy, others used this term to designate the rule governing that case, while still others used it to designate the text upon which the rule was based. The texts, it should be noted, played a critical role in the thinking of all jurists, for a principal case is a case governed by a *text-based* rule and an original rule is, of course, the text-based rule itself. Āmidī argues that his usage is the most appropriate one in that without an actual case both the rule governing the case and the text upon which the rule is based are inconceivable. It is the preexisting case, the one in the light of which the novel case is considered, that most deserves to be regarded as the principal factor in an analogy.

As for the term *far‘*, some applied it to the novel case, while others applied it to the rule governing the novel case. Āmidī himself admits that the latter application is the more appropriate, arguing that since the case always comes before the rule it is always principal relative to the rule, which is subsequent to it. On the other hand, the rule governing the novel case clearly is not, for Āmidī, among the constituent elements or "pillars" of an analogy. It cannot be, since it is the *product* of the analogy, that which the analogy yields. The product cannot be a constituent part of that which produces it. Accordingly, Āmidī later describes the rule governing the novel

case as a *farʿ*, not merely in relation to the novel case itself, but in relation to the analogy *as a whole*. The four “pillars” work together as an *asl* in relation to which the rule that they produce is a *farʿ*. The upshot is that Āmidī is willing to regard the novel case as a *farʿ* when considered solely in terms of its relationship to other elements *within* an analogy; when considered in relation to what lies *outside* the analogy—the rule governing the novel case—the novel case itself is an *asl*, or, more correctly, part of an *asl*—the analogy as a whole.

The duality of *asl* and *farʿ* is, of course, omnipresent in traditional Islamic thought, and we should never lose sight of its general import: it is the duality of the principal and that which derives from it or is dependent upon it. On the other hand, the specific application of these terms varies. Thus the entire science of theoretical jurisprudence is *asl* in relation to the science of *fiqh* (practical jurisprudence), which is *farʿ*. Similarly, the indicators of the rules of law are all *asl*, while the rules themselves are *farʿ*. The Qurʾān, as a self-authenticating miraculous document, is *asl* while the Sunna, in respect to its deriving its authority from the Qurʾān, is *farʿ* (and so on). Here the two terms acquire an application that relates specifically to analogy.

A word is in order here concerning my use of the word “case.” This, I think, best expresses what Āmidī has in mind when using the terms *asl* and *farʿ*. The *asl* and the *farʿ* are both *mahall al-hukm*, “object of a rule” (i.e., the fact or set of facts to which a rule applies). There is clearly a correlation in Āmidī’s usage between *mahall* and *waqāʿiʿ/hawādith* (“facts”). In the language of law, a case is of course a set of facts that a court deliberates on in the process of adjudicating a particular dispute. The rules of divine law may indeed unfold in the course of such adjudication as the Divine Lawgiver or Prophet assumes the role of judge. But more often than not they unfold through legislative pronouncement or in response to queries about real or imagined situations. I will here take the liberty of using the term “case” as a general designation for those facts or that set of facts to which a rule of law applies, without regard to whether an actual application in a court of law has taken place. Rules of law envision cases as much as they resolve them judicially. It is this broader outlook that will inform my usage in these pages.

A rule of course applies potentially to a plurality of identical cases (identical, that is, with reference to essential features), and there may be good reason for speaking of a rule as applying to a type of case rather than to particular cases. However, Muslim jurists do not ordinarily speak in this manner and neither shall I. *Waqāʿiʿ*, *hawādith*, *suwar* and similar terms seem always to refer to facts considered as concrete happenings. Sometimes it is the initial instance that they refer to, the original case that elicited the rule

in the first place (even if the rule was introduced by way of legislative pronouncement), although the terms are by no means restricted to this usage. In any case, *waqā'ir* are seen as repeatable, even though persons or circumstances may differ. For example, a case of *khamr*-drinking is always a case of *khamr*-drinking, no matter what persons or circumstances may be involved, so long as certain definitive features are present (including that feature we shall be calling the occasioning factor behind the rule).

Earlier I emphasized that rules of law are applicable, in the final analysis, to human *acts*, not to objects. The reader may recall from my earlier chapter on the *fiqh* postulates of Muslim jurisprudence (chapter 2 of Part I)⁶ that Āmidī subsumed the rule of law under the larger category of the divine categorization (*hukm*) of a human act. More specifically, the rules of law are God's categorizations of acts as obligatory and forbidden. Consequently, the facts to which a rule applies necessarily consist preeminently of acts. Every case has a human act as its centerpiece. That this is so is obvious to any legal mind. However, since acts entail objects (as the drinking of *khamr* entails *khamr*), the focus of attention of the Muslim jurists can shift on occasion from act to object. Thus one speaks of the case of *khamr* rather than of the case of consumption of *khamr*; and, as we will see, in speaking of a feature of the case that constitutes the occasioning factor behind the rule governing it, Muslim jurisprudents frequently treat the feature as a feature of the object rather than as a feature of the act.

Conditions of Validity of an Analogy

The conditions an analogy must satisfy in order to be treated as a valid indicator of the law pertain to three of the four constituents of an analogy—the rule governing the principal case, the occasioning factor behind that rule, and the novel case. If these constituents do not satisfy the pertinent conditions, the analogy may be called into question. In the case of the first constituent—the principal case—there are no such conditions. A principal case was a simple given, the *asl* of the entire analogy: it had to be taken as it was. Everything else was subject to scrutiny.

Many of the conditions Āmidī discusses were a matter of controversy among the Muslim dialecticians. This is especially true of the conditions that pertain to the rule-occasioning factor, the all-important vital link in a valid analogy. Āmidī records very few such conditions that were agreed upon by all; consequently, his account of the controversies surrounding these conditions is much longer than his account of the controversies surrounding the conditions pertaining to the other two constituents of an analogy.

We begin with the conditions that pertain to the rule governing the principal case.⁷ Āmidī lists eight such conditions, all but three of which are non-controversial.

1. The rule governing the principal case—which I shall for the sake of brevity hereafter call “the original rule,” as opposed to the rule governing the novel case, which I shall call “the derived rule”—must be a bona fide rule of divine law, since the whole point of a legal analogy is that it makes known the application of the law to a novel case. To use modern jargon: if the output of an analogy is to be law, the input must be law. (Āmidī notes in passing that if the original rule is a linguistic rule the analogy will not be valid, since analogy does not produce valid results in the realm of linguistic phenomena.)
2. The original rule must not be an abrogated rule, since the rule-occasioning factor through which the derived rule is to be ascertained cannot be extrapolated from an abrogated rule.
3. The original rule must be based upon a bona fide indicator of the divine law, since a rule that is not so based is not a rule of divine law. This condition is clearly a logical extension of the first one.
4. The original rule must not itself be the product of an analogy, for if it is the product of an analogy the factor occasioning it will be identical with the occasioning factor behind some other rule, namely, the original rule in the analogy of which it is the product. This being the case, then a rule that is itself the product of an analogy can never function as an original rule in its own right, since it is necessarily dependent, ultimately, on some rule that is not the product of an analogy; the decisive rule-occasioning factor must, in other words, be considered as having been extrapolated from the rule that is not the product of an analogy. This condition in effect clarifies the third one. Analogy is for most jurists a bona fide indicator of the divine law. However, the original rule in an analogy may not be based upon an analogy. The conclusion is that it must be based upon an indicator found in a text, whether Qur’ānic, Sunnaic, or Ijmā’ic.
5. The original rule must conform to the proprieties (*ṣunan*) of analogy. By “proprieties” Āmidī means two things: that the import of the rule be comprehensible and that the rule not be confined *ab initio* to a particular case, admitting of no application to similar cases.
6. The original rule must either be stated in a Qur’ānic or Sunnaic text or be supported by an Ijmā’ic consensus. The Arabic expression I have translated as “stated in a Qur’ānic or Sunnaic text” is *mansūs alayhi*. I take this phrase to describe a rule that is clearly and unambiguously

stated in a text such that there will be no dispute among mujtahids about it. This condition seems intended to narrow down even further than do the above conditions the scope of what may be regarded as a valid original rule in an analogy.

7. The indicator of the original rule—that is to say, the Qur'ānic, Sunnaic, or Ijmā'ic text upon which it is based—must not itself in any way signify the rule governing the novel case.
8. The occasioning factor behind the original rule must be based on an authoritative indicator, presumably a Qur'ānic or Sunnaic text or an Ijmā'ic consensus; otherwise, the original rule will not be productive of a valid analogy. It is not enough, in other words, that the original rule be based on an authoritative indicator; the rule-occasioning factor itself must be based on such an indicator. A rule based on an authoritative indicator but whose occasioning factor is not is, of course, operative in relation to the cases it directly governs, but it is not useful in the business of determining analogies that engender rules governing novel cases.

Of these eight conditions, the three controversial ones are the fourth, the sixth, and the eighth. The fourth condition, Āmidī tells us, was affirmed by the majority of his Shāfi'ī associates and by al-Karkhī and rejected by the Hanbalis and by Abū 'Abd Allāh al-Basrī. However, he does not give us an account of the dialectic itself: we are not told what arguments were advanced by those who rejected this condition. Instead, we are presented with an extended and complex argument in its favor, the gist of which is given above.

The sixth condition was intended by those who affirmed it to exclude from consideration rules whose validity as an original rule within an analogy could be disputed in debates between mujtahids. Those who rejected this condition—and Āmidī does not say which party constituted the majority, if either—took the view that such disputes did not exclude such rules from consideration in an analogy. Āmidī, again, does not give us a complete account of the dialectic over this issue. However, he does take a clear stand in favor of the second group. His guiding principle is one we have encountered before: in the absence of an infallible indicator of the divine law, the opinion of a mujtahid is decisive *for him and for his disciples*. This principle, as we have noted, to some extent relativizes the law: the law is whatever the mujtahid sincerely believes to be the law. Thus if a mujtahid genuinely believes, as a result of an utmost expenditure of sincere scholarly effort, that a particular rule is suited, by virtue of an occasioning factor he has discovered, to function as an original rule in an analogy, then any analogy that may result from his deliberations is valid for him and for his disciples.

The eighth condition was apparently rejected by jurists who regarded certain general principles that could not be tied to specific indicators as suited to be regarded as rule-occasioning factors in certain cases. Among such general principles were the so-called “purposes of the law” (*maqāsid al-sharīʿa*). We shall be considering the employment of such principles as rule-occasioning factors shortly. Here we may note simply that Āmidī accepts this practice but insists that the principles in question not be without supporting indicators. However, the indicators do not signify the principles in a one-on-one manner in the sense that for each principle a specific indicator or group of indicators can be found to signify that principle and it alone; rather, the indicators signify the principles in a more adumbrative manner that requires that the principles be inductively inferred from a great many indicators. Āmidī is willing to accept the eighth condition provided it is understood that rule-occasioning factors that are signified in this manner satisfy the condition as fully as rule-occasioning factors that are supported in a more direct way by indicators.

Turning to the conditions that pertain to the rule-occasioning factor itself⁸—that is to say, to the rule-occasioning factor considered apart from its bearing upon the validity of the original rule—we find controversy everywhere. Āmidī begins his discussion of these conditions, however, with a point on which “all agree”: any feature of a principal case that is apparent to the observer and free of indeterminacy is capable of being considered as the occasioning factor behind the rule governing the principal case. This is not to say that any feature of the principal case that is thus qualified is in fact the occasioning factor but only that it *may be* the occasioning factor. Every case that presents itself to a jurist or judge entails a plurality of features, only one of which—or at most only a few of which—will in fact turn out to be the occasioning factor. The task of determining which is the occasioning factor will be considered later. Here the concern is with conditions that a feature of a principal case must satisfy in order to be eligible to be considered as the occasioning factor.

It is further agreed, says Āmidī, that it does not matter whether the feature in question be an abstraction discernible only through rational reflection, a datum of direct sensory experience, or something embedded in convention; or whether the feature in question be actually present in the principal case or consequent upon it. An example of the latter sort of feature is the slave status of children born of a marriage with a female slave. The marriage constitutes the actual case to which the rule that forbids such a marriage is applied. The occasioning factor is thus not something that constitutes part of the marriage itself, an actual feature of the marriage such as the fact that the marriage is with a female slave, but is rather something that results from the marriage.

In his discussion of the conditions pertaining to the rule-occasioning factor (*illa*) Āmidī departs from the format of his discussion of the conditions pertaining to the original rule and to the novel case. In dealing with the latter conditions, he organizes his discussion around lists. In the case of conditions pertaining to the original rule, he proceeds from condition to condition according to a clearly determined list of eight conditions; in the case of conditions pertaining to the novel case, he works with a list of five conditions. The numbers eight and five in fact appear in the titles of the relevant sections of the *Ihkām* ("Concerning the conditions pertaining to the original rule, of which there are eight" and "Concerning the conditions pertaining to the novel case, of which there are five"). Accounts of controversies having to do with the conditions thus listed are inserted where appropriate. In dealing with conditions pertaining to the rule-occasioning factor, on the other hand, Āmidī adopts the issue format; that is to say, he proceeds from controversy to controversy. Nowhere does he give us a clear-cut list of all of these conditions, although his account of the eighteenth controversy does turn out to be largely a list of eleven conditions. However, as one proceeds through the accounts of the controversies, of which there are twenty, one soon discovers that with the sole exception of the twentieth, they all have to do with conditions. The eighteenth "controversy" turns out to be a conglomeration of six controversies, each having to do with a particular condition. There are thus, altogether, twenty-four controversial conditions, the six dealt with under the heading of the eighteenth controversy plus eighteen others. Some of these Āmidī accepts as stated, others he accepts with qualifications, while the remaining he rejects altogether. In addition, Āmidī mentions seven noncontroversial conditions, upon which all Muslim jurists were agreed. Five of these are placed under the heading of the eighteenth controversy, along with the six controversial conditions mentioned above. The other two are mentioned in connection with the seventh and the nineteenth controversies. Since these conditions are agreed upon by all jurists, they are not supported by arguments. In a strictly dialectic milieu there is no need to demonstrate what is not challenged.

When we add these noncontroversial conditions to the controversial ones, we have a total of thirty-one conditions. Certain of these are, however, closely interconnected.

In some of Āmidī's accounts of controversies the condition under consideration is clearly stated through employment of the Arabic term for condition, *shart* (or a cognate such as *sharata* or *ishtirāt*), or through employment of the phrases *yajib an* and *la budda wa-an*. In other accounts this is not the case, and we are therefore obliged to extrapolate it from Āmidī's discussion.

An important clue to the presence of a condition is the Arabic term *jawāz*, “possibility,” or one of its cognates. The beginning of Āmidī’s account of the eighth controversy represents a typical format that employs this term: “[The jurists] disagree as to whether it is possible for an occasioning factor that has been extrapolated [from the texts] to be restricted [in its operation as a rule-occasioning factor]. Most Hanafīs, Malikīs, and Hanbalīs consider this to be possible [*jawwazahu*], while most Shāfi‘īs consider it to be impossible [*mana‘a min dhālik*].” To regard something as impossible is, in this context, to lay down a condition. In denying that the restriction is possible, the Shāfi‘īs are in effect saying that an occasioning factor that has been extrapolated from the texts *must not* be restricted in its operation. Thus if one finds that the presumed occasioning factor of a rule is present in a given situation but the rule is known to be inoperative in that same situation, the presumed occasioning factor is not a true occasioning factor: an important condition has not been met.

In what follows, I shall first list the conditions in the order in which they appear in Āmidī’s accounts of the first nineteen controversies, following his numbering; then I shall turn to the controversies themselves.

The conditions are as follows. Unless otherwise indicated, they are controversial.

1. The occasioning factor behind an original rule in an analogy must be neither identical with the case to which the rule applies nor a part of that case. A case, let us remember, is a fact or set of facts, of which the drinking of *khamr* is an example. If a jurist were to say that the factor occasioning the rule that forbids the drinking of *khamr* is the property of being *khamr*, he would be confusing occasioning factor with case altogether. The Legislator would, in this view, in effect be saying, “The drinking of *khamr* is forbidden because it is the drinking of *khamr*.” If, on the other hand, we suppose a rule to exist that forbids the drinking of a certain beverage containing *khamr*, then if a jurist were to say that the occasioning factor behind the rule is the presence of *khamr* in the beverage, he would not be confusing occasioning factor with case altogether, although he would be postulating as the occasioning factor something that is part of the case. The first condition disallows both juristic postures.

2. The occasioning factor behind the original rule must be, to use the Arabic term, *al-bā‘ith*. This term may be translated as “that which prompts or occasions.” To say that the occasioning factor behind the original rule must be the factor that occasions the rule is, of course, to express a tautology. The Arabic original is entirely free of any such tautology: *la budda wa-an takūna al-‘illa-lu fī’l-asli bi-ma‘nā ‘l-bā‘ith*. Literally rendered, it means: the term ‘illa must have the sense of “that which occasions.” The condition under consideration

is thus, according to the strict sense of the Arabic text, a terminological condition. It in fact provides the justification for my rendering of *‘illa* as “occasioning factor.”

This terminological condition may be transposed into a non-terminological tautology-free condition that employs the English terminology I have adopted as follows: the occasioning factor behind the original rule must truly occasion the rule. Āmidī explains what it means for something to occasion a rule: it must entail a rationale that the Legislator may be said to have had in mind as his purpose in establishing the rule. Given the terminological constraint that the condition, in its Arabic form, imposes, the term *‘illa* is applicable to a thing only if it entails such a rationale. It is important to note that the condition does not equate occasioning factor with rationale: it is not that the occasioning factor consists of a rationale but that it *entails*, or is linked to, a rationale. The condition presupposes that the occasioning factor is a feature (*wasf*) of the principal case. The point is that it is not just any feature of the principal case but is rather a feature that is tied to a rationale. The existence of a rationale is thus, according to this condition, a *sine qua non* of an analogy.

Āmidī explains that the condition has a negative corollary: the occasioning factor must not be a mere sign of the original rule (“mere” being the key term); that is, it must not merely alert us to the existence of the rule. To take the classic example: the occasioning factor behind the rule forbidding the drinking of *khamr* is universally considered to consist of its being an intoxicant. If this feature of *khamr* is truly an occasioning factor, it must be something more than a mere sign that alerts us to the forbiddenness of drinking *khamr*, although it may, incidentally, have that function. This condition seems to be intended to rule out the assimilation of rule-occasioning factors to indicators of rules. If we imagine that a mujtahid had not found in the texts, whether Qur’ānic, Sunnaic, or Ijmā’ic, any indicators for the rule forbidding the drinking of *khamr* but did find evidence that the Legislator forbade drunkenness or exposure to the possibility of drunkenness, then we would have a situation in which the mujtahid might treat the power of *khamr* to intoxicate as an indicator that the drinking of *khamr* is forbidden. In this case, he would be extrapolating the rule from the rule-occasioning factor. This, for those jurisprudents who accept the condition under consideration, disqualifies it from being considered as a genuine rule-occasioning factor and constituent of a valid analogy. In order for a rule-occasioning factor to be so considered it must arise in the mujtahid’s consciousness *after* the rule has been discovered.

3. The occasioning factor behind the original rule must not consist of a rationale that stands entirely by itself in the sense of not being accompanied

by something that gives it determinacy. This condition presupposes that rationales are all by nature indeterminate. That is to say, being general, they cover a great variety of cases and do not obtain in all cases in an equal degree or in the same manner. This variability makes them unsuited to function as rule-occasioning factors on their own. On the other hand, specific features of cases are more likely to be constant from one case to another. Therefore they, and not the rationales, are what the mujtahid should look for in his search for rule-occasioning factors. Every feature singled out as a rule-occasioning factor, of course, must entail a rationale, as the second condition (previous paragraphs) insists, for the feature itself can truly occasion or prompt (*bā'ith*) the rule only if connected in some way to a rationale. Therefore, the mujtahid must always have some awareness of a rationale behind a rule, no matter how vague this awareness may be, so that he may see the feature singled out in its functioning as the bestower of determinacy upon the otherwise indeterminate rationale. Only if he can see the feature in this manner can he treat it as the occasioning factor behind the rule. Because the feature in question is intrinsically determinate—that is to say, constant from case to case—it, and not the indeterminate rationale, is the true occasioning factor, the things that the mujtahid looks for in attempting to establish a valid analogy.

We can perhaps better understand what is involved in the third condition from the example of the prohibition against the drinking of *khamr*. The rationale behind this prohibition is that *khamr* interferes with human rationality and thus militates against one of the grand purposes of the law—the safeguarding of human rationality. However, this rationale is not a constant; it lacks determinacy. If we build rules upon it alone without reference to anything more concrete and constant, we shall end up in continual quandaries. There are many things that people do besides drinking *khamr* or other alcoholic beverages that interfere with rationality. What about the whirling of a dervish, or the act of falling in love, for example? Are all such things to be considered forbidden? Clearly not. Which, then, are to be forbidden and which not forbidden? The line simply cannot be drawn. For this reason, so the third condition presupposes, there must be a factor that pins down and gives constancy and determinacy to the rationale, a constancy and determinacy lacking in the rationale considered by itself. This factor is called in Arabic *al-dābit*, “that which contains within limits.” The power to intoxicate constitutes just such a factor. It pins down and gives focus to what the rationale itself leaves vague and unmanageable.

4. Where the original rule is an affirmative rule (that is to say, expressible by means of an affirmative statement on the order of “The drinking of *khamr* is forbidden” as opposed to a negative statement on the order of “The drinking

of unfermented grape juice is *not* forbidden”), the occasioning factor must be something that exists positively. The science of *fiqh* is understandably concerned mainly with affirmative rules: these are rules of law par excellence. A jurist might, however, on occasion declare, “Such-and-such is not forbidden.” This condition disallows the treatment of a nonexistent as the occasioning factor behind an affirmative rule, while allowing it to be the occasioning factor behind a negative rule. One may say, for example, “The drinking of grape juice is *not* forbidden because the power to intoxicate is nonexistent in grape juice,” but one cannot say such a thing as, “The drinking of *khamr* is forbidden because the power to enhance rationality is nonexistent in *khamr*.”

5. The occasioning factor behind the original rule must not itself be a rule of law.

6. The occasioning factor behind the original rule must consist of a single feature of the principal case. It may not, in other words, consist of a complex of several features.

7a. The occasioning factor behind the original rule must be present in (more literally, extendable to) the novel case in order for the analogy to be valid (noncontroversial).

7b. The occasioning factor behind a rule must be present in a case other than the case governed by that rule in order to be a true occasioning factor.

8. The occasioning factor behind the original rule must be unrestricted in its operation as a rule-occasioning factor. That is to say, it must occasion the rule in every case in which it is present. If, for example, a mujtahid claimed to have discovered an indicator for a rule permitting the drinking of a certain intoxicating beverage, he would then, in effect, be placing a restriction on the operation of the power to intoxicate as an occasioning factor. In this case, the occasioning factor would be specious, since a valid rule-occasioning factor may not, according to this condition, have such a restriction on its operation. Quite obviously, then, any analogy that entails such an occasioning factor will be invalid.

9. The rationale to which the occasioning factor behind the original rule is tied must be uniformly coincidental with the rule. That is to say, whenever the rationale obtains, the rule must obtain; if cases exist in which the rationale obtains but the rule does not, the occasioning factor ceases to be valid.⁹ Āmidī illustrates the point with the rule that exempts a traveler from certain ritual duties. The rationale generally believed to be behind this rule is that travel entails hardship and one who is involved in hardship should not be required to perform these duties. On the other hand, a porter whose daily work entails hardship like that endured by a traveler is not usually considered to be exempted from the duties in question. According to the condition just

stated, the occasioning factor behind the rule exempting the traveler from the ritual duties (which is that a certain kind of hardship is entailed in travel) is invalid if the underlying rationale (which is that hardship is contrary to the purposes of the law and should be avoided) obtains in other cases (e.g., the porter) while the rule does not.

10. Where the occasioning factor behind the original rule consists of a complex of several features of the principal case (a situation allowed only by those jurists who reject the sixth condition), the features must constitute a unit such that the validity of the analogy is not dependent upon any one of them considered apart from the others. Āmidī gives the example of the sale of a commodity that the buyer has not seen. The commonly accepted rule concerning such a sale is that it is invalid, the occasioning factor being the fact that the sale entails an item that is exchanged for something else and whose condition or quality is unknown to the buyer at the time of the transaction. These features *together*, and not either of them apart from the other, constitute the occasioning factor. This condition invalidates the practice (known as *al-naqd al-maksūr*) of faulting an analogy by singling out one of the features in a complex and showing that in some other case (in which none of the other features in the complex are present) it does not have a rule-occasioning function. Thus if a mujtahid tries to prove that the above-mentioned sale is valid since in the contract of marriage the woman's condition or quality is unknown to the husband at the time of the marriage transaction, he has failed to achieve his purpose; for he has paid attention to only one feature in a complex, neglecting the other. This other feature (an exchange of a commodity for something else) is not present in a marriage transaction.

11. The occasioning factor behind the original rule must be such that if it is negated the rule must also be negated. This condition insists that the principle that the occasioning factor prompts the rule has its obverse side: without the occasioning factor the rule does not arise. Only if this obverse side holds true can the occasioning factor be accorded validity.

12. The occasioning factor behind the original rule must be the sole factor occasioning that rule; it must not, in other words, be one of several occasioning factors that operate simultaneously to give rise to the rule.

13. The occasioning factor behind the original rule must not also be the occasioning factor behind some other rule.

14. The occasioning factor behind the original rule must serve to give determinacy to some rationale. This condition is clearly closely related to the second condition, which insists that a rule-occasioning factor cannot function apart from a rationale. It is also somewhat related to the third condition: just as a rationale cannot serve as a rule-occasioning factor apart from some

feature of the principal case that gives it determinacy, so a feature of the principal case cannot serve as a rule-occasioning factor apart from some rationale to which it gives determinacy.

15. As the giver of determinacy to a rationale, the occasioning factor behind the original rule must be indispensable to the working of the rationale in the sense that the rationale will never obtain in a particular case apart from it.

16. The occasioning factor behind the original rule must not obtain after the rule has already become operative. That is to say, the rule must not have been previously operative apart from the occasioning factor.

17. Where the original rule assumes a negative form (e.g., “*x* is *not* forbidden,” “*y* is *not* obligatory”) and the occasioning factor is some impediment to the operation of the corresponding affirmative rule (e.g., “*x* is forbidden,” “*y* is obligatory”) or the nonrealization of some condition upon which the operation of the affirmative rule depends, the occasioning factor behind the affirmative rule must be actually present and operative. The impediment or nonrealization of a condition cannot, in other words, occasion a negative rule if the corresponding affirmative rule is not otherwise operative by virtue of the presence of its occasioning factor. The point seems to be that the occasioning of a negative rule necessarily entails a *suspension* (as opposed to the absence) of a factor occasioning the corresponding affirmative rule. Āmidī draws a contrast between the negative rule based on the *absence* of the occasioning factor behind the corresponding affirmative rule and the negative rule based on an impediment or nonrealization of a condition. A possible example of the former might be “The drinking of unfermented grape juice is *not forbidden* because the power to intoxicate is *nonexistent* in it.” Here a negation is directly tied to the negation of a factor that, if present, would occasion an affirmative rule instead of the negative rule. A possible example of the latter might be “The drinking of *khamr* is *not forbidden* in the case of the mentally incapacitated because their mental incapacity impedes the operation of the rule that makes it forbidden.” Here a negation is tied, not to the absence of a factor that occasions, but to the presence of a factor that impedes. This type of negation is valid, according to the condition under consideration, only if the rule whose operation is impeded is actually occasioned by something—only if the occasioning factor is present and operative. To say that mental incapacity impedes the operation of the rule forbidding the drinking of *khamr* is tantamount to saying that the rule is, by virtue of the mental incapacity, inoperative in spite of the presence of the factor that occasions the rule, namely, the power to intoxicate.

18a. The occasioning factor behind the original rule must not have been extrapolated from the rule fallaciously (noncontroversial). If, for example,

one were to say that the rule that makes sheep subject to *zakāh*-tax is occasioned by the need to provide for the poor who have no sheep, one would have made a fallacious extrapolation, since this would result in a suspension of the obligation to pay *zakāh*-tax whenever there are no persons destitute of sheep. Such a suspension is contrary to the law, which makes payment of *zakāh*-tax on sheep and other commodities a perpetual obligation.

18b. The original rule must not prove to be inoperative, since any occasioning factor that is extrapolated from an inoperative rule cannot be productive of a valid analogy (noncontroversial).

18c. The occasioning factor behind the original rule must not consist merely of some feature of the principal case that happens to be present whenever the rule is operative and absent whenever it is inoperative (noncontroversial). A possible example would be the taste of *khamr*, as opposed to its intoxicating power. This particular taste is always present when *khamr* is consumed, but it would be incorrect to assume that this taste is the occasioning factor behind the forbidding of the drinking of *khamr*. This condition is quite obviously closely connected with the second condition (above). It is not sufficient that a feature be coincidental with the operation of a rule in order to be regarded as the occasioning factor. It must, of course, be coincidental but it must also be linked to a rationale that will distinguish it from any other features that may also happen to be coincidental with the operation of the rule.

18d. The occasioning factor behind the original rule must not be capable of being countered by some other occasioning factor for which there is equal supporting evidence and which is not present in the novel case (noncontroversial). Thus if a mujtahid discovered that the taste of *khamr* was linked to some sort of rationale and if he found the evidence for its being the occasioning factor at least as convincing as the evidence for intoxicating power's being the occasioning factor, he would not be permitted to posit an analogy on the basis of intoxicating power as the occasioning factor.

18e. The occasioning factor behind the original rule must not be in conflict with a clear Qur'ānic or Sunnaic text or with an Ijmā'ic consensus.

18f. The occasioning factor behind the original rule must not have the effect of restricting the reference of a general expression in the Qur'ān.

18g. The occasioning factor behind the original rule must not be capable of being countered by a factor that occasions the contrary of the original rule. Thus if a mujtahid, after supposing that he had discovered the occasioning factor behind a rule to the effect that a certain act was obligatory, came across some other factor that appeared to him to occasion a rule forbidding the same act, he would not be permitted to posit an analogy on the basis of the first occasioning factor.

18h. The occasioning factor must not entail any addition to what is contained within the meaning of the Qur'ānic and Sunnaic texts.

18i. The original rule from which the occasioning factor is extrapolated must itself be established with absolute certainty.

18j. The occasioning factor must not be in conflict with the opinion of a Companion of the Prophet.

18k. The presence of the occasioning factor in the novel case must be established with absolute certainty.

19a. The occasioning factor must be determined solely by the Legislator and the indicator through which it becomes manifest must accordingly be a Sharī'a indicator, that is to say, an indicator supplied by the Legislator (non-controversial).

19b. An indicator that is used to establish an occasioning factor must not itself serve to establish the rule governing the novel case. For example, if a mujtahid uses the Prophet's saying "Do not barter food for food" to show that the factor that occasions the forbidding of usurious exchanges of wheat is the quality of being an edible and then proceeds to argue that since this quality is also present in fruit usurious exchanges of fruit should also be regarded as forbidden, he is making use of a text that can also be used to demonstrate the very rule he is trying to establish with the analogy; for fruit is as much included under the general meaning of "food" as wheat.

Āmidī's own position relative to the above conditions varies. He, of course, accepts the noncontroversial ones (7, 18a–e, 19a). Of the twenty-three controversial issues, he accepts or favors some as stated (2, 4, 5, 10, 12, 14, 16, 17), accepts others with qualifications (1, 3, 8, 9, 11), and rejects still others outright (6, 13, 15, 18f–k, 19b). His acceptance of a condition with qualifications usually involves a yes-and-no approach (*tafsil*): yes, given such-and-such; no, given such-and-such.

In the interests of economy I shall not here attempt to explore at length all of the controversies recorded by Āmidī but shall rather focus on those having to do with issues I deem to be most crucial to the understanding of Muslim thinking about analogy. The other controversies will here be only touched upon briefly. The reader may find it helpful in reading the following pages occasionally to refer back to the above list of conditions, particularly to those conditions that I have explained at some length.

The first controversy is brief.¹⁰ Āmidī simply states the positions and gives his own view with a supporting argument. He does not supply an ensuing dialectic. Apparently condition no. 1 was not much debated. Āmidī accepts part of this condition and rejects the other part. He agrees that the occasioning factor—that is to say, a particular fact that occasions the original rule in

an analogy—must not be identical with the case to which the rule applies, otherwise, it would be incapable of being present in some other case. If, for example, *khamr* was forbidden simply by virtue of the fact that it is *khamr*, we would have an occasioning factor that would not apply to other intoxicating beverages, and analogies would not be forthcoming. On the other hand, Āmidī disagrees with the notion that the occasioning factor must not be a part of the case to which the original rule applies. If one has a rule that forbids drinking a mixed beverage containing *khamr* (say, a mixture of milk and *khamr*), one has an occasioning factor (the presence of *khamr*) that would apply to other mixed beverages containing *khamr* (say, a mixture of an herbal beverage and *khamr*).

This example of the mixed beverage is mine and may not be typical of what the participants in the first controversy had in mind. Āmidī gives no examples. However, one gathers that most of the standard instances of analogy would serve as examples. If one posits the power to intoxicate as the occasioning factor behind the rule forbidding the drinking of *khamr*, one has an occasioning factor that is present in the case to which the rule applies. Indeed, I frequently speak in this book of the occasioning factor as something that is present in a case, although this phrase must be taken in the broadest possible sense. In speaking of an occasioning factor as part of a case, Āmidī is using the phrase “part of” in a strictly literal sense. Thus, when an act is forbidden on account of some effect that will inevitably follow it, one has an occasioning factor (the effect) that is not, strictly speaking, part of that to which the rule applies (the act). Most analogies that one can think of, however, involve occasioning factors that are part of the factual bundle to which the occasioned rule applies.

The second controversy is also brief and devoid of a full dialectic.¹¹ Condition no. 2, we have noted, is reducible to a terminological condition: it dictates how the Arabic term *‘illa* is to be used. *‘Illa*, we are told, must have the sense of *bā‘ith*, “that which prompts, occasions.” It is this condition, I have said, that justifies my own rendering of *‘illa* throughout this book as “occasioning factor.” Āmidī argues that if a certain feature of a case is not the thing that occasions the rule governing that case but is merely a sign that the rule is applicable it cannot be correctly regarded as the *‘illa* for two reasons. First of all, a sign does nothing more than make something known. Now, a rule is known to govern a particular case, not from an *‘illa*, but from the addressed speech of the Legislator. That is to say, we know that the drinking of *khamr* is forbidden from what the Legislator says about *khamr*, not from an *‘illa*. Second, since an *‘illa* must be extrapolated from a rule, then we would be caught in a vicious circle if we said that the *‘illa* makes the rule known.

The third controversy takes up a general subject that is the concern of several other controversies as well:¹² the relationship between the feature (*wasf*) of a case that occasions a rule governing the case and the rationale (*hikma*) behind the rule. The other controversies that are concerned with this subject are the ninth, the fourteenth, and the fifteenth. I shall here deal with these controversies together, departing for the moment from Āmidī's order of treatment.

It will be helpful, first, to review the four conditions at issue in these controversies. The first (condition no. 3) states, in effect, that a rationale behind a rule cannot in and of itself be the factor that occasions the rule. In other words, only the particular feature of the case at hand that is singled out as the feature that gives determinacy to (*dābit*, "places within limits") the rationale may be regarded as occasioning the rule. On the other hand, if the rationale obtains, the rule must also, according to a minority view, obtain (condition no. 9). It is, according to this view, unthinkable that a rationale should obtain while the rule of which it is the rationale does not. Here we have a point of view that comes very close to affirming that the rationale occasions the rule. Condition no. 9 therefore seems at this point to be in conflict with condition no. 3.

If a rationale behind a rule cannot in and of itself be the factor that occasions the rule (condition no. 3), may we conclude that the rationale is dispensable and that a feature of a particular case may occasion a rule entirely on its own without any connection with a rationale? Condition no. 14 provides a negative answer to this question: the feature must always entail a rationale—that is to say, it must always serve to give determinacy to a rationale. A feature that does not have this role is nothing more than a sign, and a mere sign, we have learned, cannot truly occasion a rule.

Finally, the question arises whether it is possible for the rationale behind a rule to obtain without the presence of the feature of the case that serves to give it determinacy. In other words, if a feature is to be said to give determinacy to a rationale, must that feature always be present in a case in order for the rationale to be operative? Condition no. 15 provides an affirmative answer to this question. Those who insisted upon this condition apparently could not conceive of a feature as truly giving determinacy to a rationale that could obtain in certain cases without its presence. The determinacy-conferring role of a particular feature seemed, to them, to make the feature indispensable to the operation of the rationale.

Āmidī's own thinking about these conditions is shaped by his belief that one must always take into account the distinction between rationales that are determinate in and of themselves and therefore not in need of something to

bestow determinacy upon them and rationales that lack this intrinsic determinateness. What may be true of rationales of the former type may not be true of rationales of the latter type. Hence, Āmidī's views concerning these conditions and the issues to which they give rise are often qualified.

Thus in the controversy over condition no. 3, while some jurists reject the condition outright and others accept it as stated, Āmidī favors the view that takes into account the above-mentioned distinction. According to this view, if the rationale is evident and inherently determinate, that is to say, not subject to variation from one case to another, then it may indeed be regarded as constituting in and of itself the occasioning factor behind a rule without depending on a bestower of determinacy (*dābit*); but if it is obscure and indeterminate, then a bestower of determinacy becomes necessary. Āmidī unfortunately does not give an example of an "evident and inherently determinate" rationale. The general tenor of his discussion suggests that rationales tend to be obscure and inherently indeterminate and that those that are evident and inherently determinate are rare. Understandably, the preoccupation of Islamic theoretical jurisprudence is with the former. However, Āmidī seems to want his methodology to allow at least for the possibility that the latter sort of rationales may arise.

Some comment on the Arabic terminology behind the phrases "evident and inherently determinate" and "obscure and inherently indeterminate" is in order. We have here two pairs of opposing terms, "evident" and "obscure," on the one hand, and "determinate" and "indeterminate," on the other. The corresponding Arabic terms are *zāhir* and *khafī* (for the first pair) and *mundabit* and *mudtarib* (for the second pair). *Zāhir* is one of the most pervasive of all terms within the science of theoretical jurisprudence, and we have encountered it in various contexts. In chapter 9 it appeared as the designation for words considered as bearers of probable meanings; but we noted that it can also be applied to the meanings themselves.¹³ In its broadest sense it embraces all that becomes manifest through indicators. An indicator, we learned in an earlier chapter, is an instrument through which the law becomes manifest. Apart from indicators the law is hidden from sight. Thanks to the indicator, it enters the light of day.

What is true of the law in general is true of rationales underlying particular rules of law. They are, like the entire law, *ab initio* hidden from view. As the mujtahid ponders the indicators, they begin to become manifest. But rationales do not always enter the light of day; some, due to the inadequacy either of the indicators themselves or of the mujtahid's use of them, remain in the original obscurity and hiddenness. This state is designated by means of the term *khafī*, clearly synonymous with the term *mushkil*, which Āmidī

uses elsewhere. Obscurity may arise, for example, from ambiguity or vagueness. When a rationale is couched in ambiguous or vague language and contextual indicators are not available to clear up the ambiguity or vagueness, the rationale will not come to light; it will remain in obscurity. The obscurity or hiddenness is not necessarily absolute, for when something is absolutely hidden it is not known at all. Rather, we are dealing here with a partial or relative hiddenness. A rationale that is described as hidden will not ordinarily be totally out of sight, but may rather be seen “through a glass darkly.” Rationales that are totally out of sight are useless to the enterprise of formulating the divine law.

The terms *mundabit* and *mudtarib* convey somewhat different opposing concepts. *Mundabit* is related to *dābit*, “that which places within limits, gives determinacy to”; it may be rendered as “contained within limits, determinate.” A thing may be *mundabit* by virtue of something other than itself (viz., a *dābit*). Āmidī’s addition of the phrase *bi-naṣṣih* indicates that he has in mind what is *mundabit* without the help of a *dābit*, what is inherently *mundabit*. *Mudtarib* means literally “confused, unstable, inconstant.” As an antonym to *mundabit* it may be rendered as “indeterminate.” A thing that is *mudtarib* is always (at least in the usage presently under consideration) inherently *mudtarib*. We never hear of a thing’s becoming *mudtarib* by virtue of something other than itself. That would imply that the thing had been *mundabit* and that something had intervened to make it *mudtarib*. From the point of view of the science of theoretical jurisprudence, when a thing is *mundabit* there is no conceivable factor that would make it *mudtarib*. Being *mundabit* is a desideratum: there can be no reaching out for what will put this state to an end. On the other hand, when a thing is *mudtarib*, there is, in Islamic theoretical jurisprudence, an instinctive reaching out for a *dābit*, something that will put an end to the state of being *mudtarib*.

The terms *mundabit* and *mudtarib* play the dominant role in the thinking of the Muslim jurists about rationales of rules and features of cases linked to those rationales. The terms *zāhir* and *khafī* play a subordinate role. It is noteworthy that *zāhir* is always juxtaposed with *mundabit* and *khafī* with *mudtarib*. If *zāhir* and *khafī* represented truly independent concepts, one would suppose it possible for a rationale to be *zāhir* but *mudtarib*, evident but indeterminate. But this appears not to be possible. It seems that being indeterminate has something to do with being partially hidden from sight, with being unclear. “Inherently indeterminate” seems to describe the state of the rationale as a datum of revelation, not as an idea that exists eternally in the psyche of the Legislator.

Because of the subordinate place of the categories of evidentness and obscurity in the thinking of the Muslim jurists and their preoccupation

with the categories of determinacy and indeterminacy, I shall in what follows speak only with reference to the latter categories. The reader should, however, always bear in mind that "determinate" implies "evident" and that "indeterminate" implies "obscure."

That a rationale that is inherently determinate may be regarded as constituting a rule-occasioning factor on its own is, according to Āmidī, arguable as follows.

It is agreed that, if the rationale behind a rule is inherently indeterminate but acquires determinacy from some feature of the case to which it applies that is inherently determinate, the feature in question may rightfully be treated as the occasioning factor behind the rule, even though it does not itself constitute the rationale the Legislator had in mind in ordaining the rule. It is, and can only be, the rationale, indeterminate though it may be, that constitutes the Legislator's aim or purpose (*maqsūd*). Now if the rationale, which constitutes the purpose behind the rule, happens to be equal to the feature under consideration in determinacy, it will necessarily take precedence over the feature as the thing that is to be treated as the occasioning factor. In other words, where the rationale is inherently determinate, it is much more suited to be treated as the occasioning factor than is any feature of the case. What justifies the shift of attention from the rationale to a feature of the case is solely the element of indeterminacy that the rationale may exhibit.

But, objects the adversary, the above argument assumes that it is possible for a rationale to be inherently determinate. We do not accept this assumption, for rationales relate to human need, both the need for benefits and the need to avoid harm; and a need is by its very nature indeterminate inasmuch as it constantly increases and decreases. Furthermore, even if we admitted that it is possible, in rare instances, for a rationale to be inherently determinate such that it may be treated as the occasioning factor behind a rule, still the task of ascertaining a rationale in those few cases in which it is possible to do so entails a great deal of strain and hardship, and this is contrary to Qur'ān 22:78 ("He has chosen you and has not laid upon you in religion any hardship"). Āmidī's reply: the present discussion rests upon the assumption that rationales are in some cases inherently determinate. In such cases the ascertainment of the rationale entails no more hardship than the ascertainment of a feature of a case under consideration that may be thought to give determinacy to the rationale. A rationale that is inherently determinate is on a par with a feature of the case that is inherently determinate. If we rule out consideration of the rationale as the occasioning factor behind a rule on the ground that ascertaining it entails a degree of hardship, then we must rule out consideration of a feature of the case as well. To do this destroys the validity of

analogy as an indicator of the divine law. This rebuttal is, of course, effective only among those who accept analogy.

A rationale that is inherently indeterminate may not, says Āmidī, be treated as the occasioning factor behind a rule for the following reasons.

1. If a rationale is indeterminate, varying from case to case, from person to person, and from time to time, then it is not possible to ascertain it except with great strain and hardship. But it is the practice of the Legislator to enable people to depend, in their efforts to live by the law, on things that are determinate, thereby sparing them strain and confusion. For example, the Legislator has granted a relaxation of certain religious duties for long-distance travelers. The occasioning factor behind this provision—the long-distance travel—is well defined in the law. People can know without confusion when it is operative and when it is not. The purpose behind the relaxation of duty is, of course, relief from the hardship entailed in attempting to perform a religious duty such as fasting while involved in the rigors of long-distance travel. But the mujtahid cannot treat relief from hardship as such as the occasioning factor behind the relaxation of duty, since this is much too variable and would create confusion. For the Legislator does not, for example, grant a relaxation of religious duties for a porter, for whom fasting may be a much greater hardship than it is for a traveler.

2. To treat an indeterminate rationale as the occasioning factor behind a rule is to contradict the consensus alluded to above to the effect that when the case under consideration exhibits a feature that is determinate and that is linked to the rationale it is a valid procedure to treat that feature, and not the rationale, as the occasioning factor behind the rule. Here we have a clear appeal to a consensus. Yet a significant number of Muslim jurists reject the indicatory role of analogy altogether, so the consensus Āmidī has in mind can hardly be Ijmāʿic and thus infallible. A consensus within a particular school of thought can, it should be kept in mind, carry weight even if it does not carry absolute finality. What the argument seems to be saying is that if one treats an indeterminate rationale as the occasioning factor behind a rule one is violating a consensus among jurists who accept analogy as an indicator of the law and should therefore give a second thought to what one has done.

3. The determination that a rationale that is inherently indeterminate is the occasioning factor behind a rule is an extremely difficult procedure that imposes strain and hardship upon the person seeking to discover the law, thus contradicting Qurʾān 22:78 (“He has chosen you and has not laid upon you in religion any hardship”). The rationale that is inherently determinate is, on the other hand, quite another matter. The determination that it is the

occasioning factor behind a rule entails much less strain. This third point in Āmidi's argument is obviously closely related to the first.

Āmidi considers and refutes objections against all three of the above-stated arguments. Against the first the following objection is raised. While the ascertainment of a rationale that is indeterminate does indeed involve a degree of strain and hardship, yet there is no escaping the need to ascertain it even when a feature of the case under consideration is treated as the occasioning factor behind the rule. For, as has been shown, the feature in question is of no relevance unless it is connected with a rationale. Awareness of the rationale, however dim, is therefore indispensable to the treatment of the feature as the occasioning factor. But if it is indispensable, then the rationale is itself the real occasioning factor and should be treated as such. Āmidi's reply: if we are going to treat a rationale as the occasioning factor behind a rule and thus establish a valid analogy, we must be familiar with the extent to which the rationale obtains in all cases as well as with all that is specific to it so that we can be sure that it is not present in the two cases (principal and novel) in differing degrees. But this is not possible when the rationale is indeterminate and variable.

The objection to the second argument runs as follows. This argument misconstrues the consensus to which it appeals. What the consensus affirms is that where a case exhibits a feature that is determinate and connected with a rationale it is *permissible* to treat the feature as the occasioning factor behind a rule. The consensus does not affirm that it is *forbidden*, when the case does not exhibit such a feature, to treat the indeterminate rationale as the occasioning factor. Āmidi's reply: if it was really permissible (that is, not forbidden) to treat the indeterminate rationale as the occasioning factor, then there would be no real reason for treating a determinacy-bestowing feature of the case, when one is present, as the occasioning factor. It is thus the adversary who misconstrues the consensus, since his understanding of it produces an unacceptable result.

Finally, against the third argument the adversary contends that even when one takes a fully determinate feature of a case to be the occasioning factor behind a rule one is still involved in a search for the indeterminate rationale to which the feature is linked, since a feature not linked to a rationale cannot be the occasioning factor; and the search for the indeterminate rationale entails just as much hardship as when the feature in question is not present. In fact, the hardship is even greater in this case, since one is attempting to discover both a rationale and a feature linked to it that gives determinacy to it, rather than just a rationale. If we are to make an exception to Qur'ān 22:78 in the case of the search for a rationale along with a determinacy-bestower

(*dābit*), then we must make an exception in the case of the search for the rationale alone, which involves a lesser amount of hardship.

Āmidī's reply: we do not accept the notion that the hardship entailed in the search for an indeterminate rationale along with a determinacy-bestower is equal to, or greater than, the hardship entailed in the search for the rationale alone, for when we do not have a determinacy-bestower we must know much more about the rationale so that we may be sure that it is present in the principal case in the same degree as in the novel case. When we have a determinacy-bestowing feature of the case under consideration, we need know nothing more than that the feature in question is linked to a rationale; for this a very general idea about the rationale will suffice. Clearly, the acquisition of this general idea does not entail as much hardship as the acquisition of more specific information about the rationale.

In developing his own viewpoint with regard to condition no. 9,¹⁴ Āmidī again takes into account the distinction between rationales that are inherently determinate and rationales that are not. Condition no. 9 applies to the latter category, but not to the former. That is to say, when a rationale is inherently determinate, then it must indeed be uniformly coincidental with the rule of which it is the rationale. But, then, such a rationale is to be treated as the occasioning factor, so that what Āmidī is really saying is that the occasioning factor must be uniformly coincidental with the rule it occasions: whenever the occasioning factor is present, the rule must obtain. With this all jurists who accept analogy as an indicator of the divine law, of course, agree. Where disagreement arises is over the notion that a rationale may be the occasioning factor. This question has already been dealt with.

Condition no. 9 is designed to rule out "breakage" (*kasr*). If one affirms that when the rationale behind a rule obtains the rule itself may or may not obtain, one is allowing a break between the rationale and the rule in some cases in which the rationale obtains but the rule does not. The majority of jurists, in allowing breakage altogether, thus totally rejecting condition no. 9, quite obviously do not acknowledge, as does Āmidī, that a rationale may be inherently determinate and thus function as the occasioning factor. As far as indeterminate rationales are concerned, the majority position, says Āmidī, is the correct one. The minority who uphold condition no. 9 take the position that, since the rationale thought to be behind the relaxation of certain religious duties in the case of the long-distance traveler obtains in the case of the porter while the relaxation itself does not, the use of long-distance travel as an occasioning factor for a relaxation of religious duties on the ground that it entails hardship is an invalid procedure. Āmidī agrees with the

majority in opposing this way of thinking on the ground that the rationale in question is inherently indeterminate.

But, argue the minority, what is really uppermost in the Legislator's mind in ordaining a rule is the rationale quite apart from any particular feature of a case with which it may happen to be linked. This being the case, then if the rationale thought to be behind a rule obtains in any given case but the rule does not it is obvious that one's thinking has been flawed and that the feature to which the alleged rationale is linked is not a true occasioning factor. Āmidī's reply: the thing that effectively prompts or occasions a rule cannot be an indeterminate rationale taken in isolation but must rather be either a rationale that is inherently determinate or an indeterminate rationale considered in relation to a determinacy-bestowing feature of the case under consideration. In the latter case, what one is really dealing with is a rationale that, though indeterminate in itself, has *become* determinate through something other than itself.

Āmidī and, it appears, the great majority of jurists agree wholeheartedly with condition no. 14.¹⁵ Thus if we consider preservation of human life to be the rationale behind the *lex talionis* and agree that it must, by virtue of its inconstancy from case to case, be regarded as indeterminate in itself and in need of a determinacy-bestower (*dābit*), we must be sure that whatever we take to be the occasioning factor behind the *lex talionis* does indeed serve to give determinacy to this rationale. Accordingly, it is wrong to regard sheer physical mutilation (*jarh*) as the occasioning factor behind the *lex talionis*, since physical mutilation does not always entail a threat to human life. If, for example, one mutilates a corpse and applies the *lex talionis* to the offender, one has done nothing in the interest of preservation of human life. Sheer physical mutilation cannot, therefore, be the occasioning factor.

Finally, Āmidī disagrees strongly with condition no. 15.¹⁶ Again, he seems to be following the majority view. It is not, in this view, necessary that something that happens to give determinacy to an otherwise indeterminate rationale in a given case be absolutely indispensable to the operation of the rationale in order to be considered the occasioning factor. The supporters of condition no. 15 argue that if it was possible for an indeterminate rationale to obtain in the absence of that which gives it determinacy then one of two results would occur. Either the rule obtains, in which event it becomes necessary to treat the rationale as the real occasioning factor and the bestower of determinacy as superfluous; or the rule does not obtain, in which event the rationale will be ignored. Both results are, of course, unacceptable. Āmidī's reply: this argument does not take into account the possibility that a rationale can acquire determinacy through more than one determinacy-bestower.

Thus if one determinacy-bestower is absent in a particular case, another may very well be present. No one determinacy-bestower is indispensable. This response clearly implies that an indeterminate rationale must, in order to be operative, have something to give it determinacy; it simply affirms that no one thing can be assumed to be the sole and therefore indispensable determinacy-bestower.

Āmidī's views regarding the four conditions just discussed may be summarized as follows:

1. The occasioning factor behind the original rule in an analogy must not consist of an indeterminate rationale. It may, on the other hand, consist of a rationale that is inherently determinate. An indeterminate rationale must, in order to have any effect at all upon a case, be linked to some feature of the case that serves to pin it down, to give it the determinacy it otherwise lacks.
2. If the rationale behind the original rule is indeterminate, it need not be uniformly coincidental with the rule in the sense that whenever it obtains the rule must obtain. However, if the rationale is inherently determinate—in which case it becomes the real occasioning factor—the opposite is true.
3. The occasioning factor behind the original rule, if it is not an inherently determinate rationale, must serve to give determinacy to an otherwise indeterminate rationale.
4. If the occasioning factor behind the original rule is not an inherently determinate rationale but is rather a feature of the principal case that gives determinacy to an otherwise indeterminate rationale, it is not necessary that this particular feature be indispensable to the working of the rationale in the sense that the rationale can never be relevant to a case apart from it.

The full significance of the controversies over the four conditions should not be allowed to pass unnoticed. What is particularly significant about these controversies is the inclination of the great majority of Muslim jurists to demand determinacy as a requirement of the occasioning factor behind the original rule in an analogy. The whole enterprise of formulating the law on the basis of analogies faced stiff criticism from early times, particular from Zāhirī and Shī'ī circles. We shall consider the criticisms leveled against it in the next chapter. Here I wish merely to suggest that the demand for determinacy perhaps reflects sensitivity to this criticism and a wish to demonstrate to critics that the formulation of the law on the basis of analogies was not as slippery an undertaking as they might have imagined. On one point all Sunnī Muslims are agreed: the law is not of man's making. God is its sole

ultimate author, and human judgment concerning right and wrong in no way enters into the shaping of the law. To the extent human judgment enters in at all, it takes the form of exegetical judgment as to what constitutes the intention of the Legislator. Any judgment about the law made independently of texts amounts to an arrogation of a prerogative that belongs only to God; it is thus a form of disobedience. By insisting on determinacy, those jurists who advocated analogizing could claim that they were serious about keeping this method of formulating the law strictly within the domain of bona fide exegesis and that they were keeping the human judgment factor within definite limits.

Most jurists who advocated analogizing considered all rationales to be inherently indeterminate and thus shied away from the treatment of rationales as occasioning factors behind rules. Āmidī takes exception to this view, insisting that there is such a thing as an inherently determinate rationale; but he gives no examples, and it seems clear from the general tone of his discussion that he regards such rationales as rare. For all practical purposes, therefore, it is the indeterminate rationale with which the mujtahid must ordinarily deal. Given the indeterminacy of all or most rationales, the search for determinacy becomes fixated upon the features of the case to which the original rule applies. The feature selected to be treated as the occasioning factor must possess the determinacy the rationale lacks, since determinacy is a *sine qua non* of a valid analogy. It must also possess the quality of manifestness, which, as we have noted, is closely linked to determinacy. On the other hand, it is not enough that the feature to be treated as the occasioning factor be determinate and manifest. A case may have several features that may possess these qualities but that may not in fact occasion the rule. The further requirement is that the feature in question be linked to the rationale behind the rule as the thing that gives determinacy to that rationale. Thus the rationale, despite its exclusion from consideration as the occasioning factor, by no means turns out to be irrelevant.

These points may be illustrated, once again, with the example of the rule that forbids the drinking of *khamr*. If one treated the acknowledged rationale behind this rule—the safeguarding of human rationality—as the occasioning factor behind the rule, one would open the door to almost unlimited and certainly uncontrollable analogizing. Are all acts that entail a diminishing of human rationality, however slight, to be counted as forbidden? If not, where does one draw the line? Without specific guidance from revelation, one of two things follows: either the mujtahid will rely upon his own wholly independent judgment (as opposed to an exegetical or text-guided judgment) or the analogizing enterprise will be abandoned. Since the former alternative

constitutes the forbidden innovation (*bid'a*), the latter would seem to be the inevitable outcome. On the other hand, if a determinate and manifest feature of the case under consideration—the power of *khamr* to intoxicate—can be singled out as giving determinacy and focus to the rationale, then the mujtahid has the line drawn for him. It is not the diminishing of rationality in general that becomes decisive for the mujtahid, but rather the more specific kind of diminishing of rationality that results from intoxication. Intoxication is thus the operative factor in determining whether other cases are to be treated as analogous.

Āmidī's account of the controversies strongly suggests that there were at least a few Muslim jurists who were willing to treat indeterminate rationales as occasioning factors. They presumably believed that the line-drawing mentioned above could be done with some degree of guidance from revelation; but as we are not given a full statement of their point of view, we are left in the dark as to exactly how they claimed to receive this guidance. It is clear from the prevailing rejection of their point of view that the great majority of Muslim jurists were unwilling to endorse an approach to the formulation of the law that allowed a mujtahid first to ascertain what were the general rationales or purposes behind existing rules of law and then, on the basis of these general rationales or purposes, to go about freely formulating other rules.

There was, of course, widespread interest in the general purposes of the law, and there emerged, at least among jurists who accepted the analogizing approach to the formulation of the law, a common conviction that it was possible, through careful inductive study of rules of law and of texts upon which they were based, to ascertain what general purposes the Legislator had in mind in establishing rules of law. By Āmidī's time, there was already wide agreement as to what these purposes were, and we shall turn to them in the next chapter. The issue on which the jurists disagreed, however, was whether or not these purposes could be used, apart from any other considerations, as a basis for formulating hitherto-undiscovered rules of law. If they could be so used, they would have to be treated as occasioning factors behind existing rules, and the new rules would have to be justified on the basis of a claim of analogy. Only a minority were willing to follow such a procedure; the rest overwhelmingly insisted on a higher degree of determinacy in those things that gave rise to analogies.

We may now turn to the other conditions that pertain to the occasioning factor behind an original rule in an analogy. Again, I shall not follow Āmidī's order of presentation but shall deal with these conditions in clusters that can be discerned from concerns that certain of these conditions have in common

with each other. I should note, however, that all of the controversies share a common understanding that the occasioning factor behind the original rule is a feature of the principal case, not a rationale.

We have just considered a cluster of conditions (nos. 3, 9, 14, 15) that have in common a concern with determinacy and the role of rationales. Conditions 8, 11, and 16 form another such cluster. Here the common concern is with the relationship between occasioning factors—now presumed to be features of cases—and the rules they occasion. Condition no. 8 states, in effect, that whenever the occasioning factor obtains the rule must obtain. If the claim is made that a certain feature of a case is the occasioning factor behind the rule governing that case but there are cases where the feature obtains while the rule does not, then the feature in question is not a genuine occasioning factor and any analogy based upon it is invalid. This condition is closely related to condition no. 9, which we have already considered, and Āmidī's order of treatment here entails a logical succession. Once it is settled that whenever the occasioning factor obtains the rule must also obtain, then the question arises whether what is true of the occasioning factor must also be true of the rationale underlying it, the rationale to which it gives determinacy. We have learned that the majority of jurists consider it unnecessary for the rule to obtain whenever the rationale obtains. (Āmidī would, we have noted, make an exception where the rationale is inherently determinate, in which case it is itself functioning as the occasioning factor.)

In the controversy over condition no. 8,¹⁷ the positions taken by different jurists vary according to whether the occasioning factor is expressly mentioned in the texts or extrapolated from the texts and, in cases where it is extrapolated, according to whether or not there is some impediment that obstructs the operation of the rule or a nonrealization of some condition upon which the operation of the rule depends. Where the occasioning factor is expressly mentioned in the texts, the great majority of jurists maintain that condition no. 8 is not in force. The reason is that if a text is found that states, for example, in explicit language that the drinking of *khamr* is forbidden because *khamr* intoxicates a mujtahid could with propriety proceed to look in the text for indicators showing that this occasioning factor (the intoxicating power of *khamr*) is not operative in certain cases. This procedure would fall under the heading of a restriction of general reference, which we have considered in an earlier chapter. The phrase "because *khamr* intoxicates" is, in other words, general, and the Legislator could in principle (in fact, of course, he does not) restrict the reference of this phrase by stipulating exceptions.

Where the occasioning factor has been extrapolated, then the question arises whether or not there are cases where an impediment or failure to meet a condition of validity prevents the rule from being operative. An example of an impediment may be drawn from the law of marriage. If we take the Qur'ānic dictum "Marry those women who are pleasing to you" to be signifying that marriage is lawful, we have a rule of law for which there are clear impediments, such as consanguinity. Thus, whenever consanguinity is present, we have a case where an occasioning factor (femaleness?) obtains but the rule does not. Condition no. 8 accordingly does not apply to such cases, according to the majority of Hanafis, Malikis, and Hanbalis. However, most Shāfi'is, Āmidī tells us, maintained that it does. Just how these Shāfi'is explained their point of view is difficult to determine. I gather that they maintained that where an impediment or nonrealization of a condition of validity prevented a rule from obtaining in a case where the supposed occasioning factor obtained, the occasioning factor was to be rejected as not constituting a genuine occasioning factor. On the other hand, where no such impediment or nonrealization of a condition of validity entered into the situation, the Hanafis, Malikis, and Hanbalis themselves fell into disagreement. Most said that the condition came into force at this point, where a few said that it did not.

A mainline majority position may quite easily be picked out from this maze. If an occasioning factor is clearly stated in the text, then one has general language for which any mujtahid may properly look for indicators of a restriction of reference, and one must regard condition no. 8 as inapplicable, since one must allow for the possibility that there are cases where the occasioning factor obtains but the rule does not. If the occasioning factor is extrapolated, this procedure of searching for indicators of restricted reference becomes inappropriate; however, if an impediment or a nonrealization of a condition of validity is discernible, one must still regard the condition as inapplicable, since here the occasioning factor quite clearly obtains while the rule does not. Where there is no such impediment or nonrealization of a condition of validity, the situation is quite different. Here there is no solid basis upon which a mujtahid can posit the possibility of an occasioning factor's obtaining while the rule does not. Thus, the bottom line of this majority way of thinking is that, except in cases where the occasioning factor is explicitly mentioned in the texts or where an impediment or nonrealization of a condition of validity is ascertainable, whenever an occasioning factor obtains the rule it occasions must also obtain. Āmidī agrees with the substance of this way of thinking, although he adds refinements and additional distinctions of his own to produce a highly intricate statement I shall not take time to explore here.

Condition no. 11 is the obverse side of condition no. 8.¹⁸ It affirms, in effect, that when an occasioning factor behind a rule does not obtain the rule itself must not obtain. In other words, if a supposed occasioning factor does not obtain but the rule does, it shows itself not to be a genuine occasioning factor, and any analogy based upon it is invalid. Āmidī does not indicate a majority view on this condition but simply tells us that some jurists (his own fellow-schoolmen and the Mu'tazilīs) accepted it and others did not. Āmidī, in typical fashion, insists that an important distinction must be taken into account. Certain rules are occasioned by one factor in all cases, whereas other rules are occasioned by different factors in different cases. Where an occasioning factor is the one and only occasioning factor behind a rule, condition no. 11 does indeed apply; but where it is but one of a number of alternating occasioning factors, it does not apply, for if, in a particular case, it obtains but the rule does not, we must allow for the possibility that some other occasioning factor was operative in this case.

Condition no. 16, as we have noted, affirms that the occasioning factor behind a rule must not obtain *after* the rule has already obtained.¹⁹ Or to put the matter another way: a rule must not obtain apart from the factor that is thought to occasion it. One may initially wonder how any Muslim jurist could have seriously entertained the possibility that a rule might obtain without its occasioning factor. However, it is clear from the short dialectic that Āmidī records what jurists who did in fact entertain this possibility had in mind. They were thinking of rules that had more than one occasioning factor and opining that prior to the moment when a rule's occasioning factor becomes operative the rule may in fact be occasioned by one of the other occasioning factors. The problem with this way of thinking, according to Āmidī, is that it implies that two distinct occasioning factors are operating simultaneously, and this, as he promises to demonstrate subsequently (see below), is not possible. The reason why two occasioning factors must, for one who accepts this way of thinking, be thought to operate simultaneously is that, once the later occasioning factor obtains, two occasioning factors are from that point on *both* at work, for there is no reason to suppose that the earlier occasioning factor would have ceased to be operative at this point.

The above reference to the joint operation of two occasioning factors brings us to our next cluster of conditions (nos. 6, 10, 12, 13), those that have to do with the multiplicity factor. Three kinds of multiplicity enter into the discussions: multiplicity of features of a given case that together form a single but complex occasioning factor; multiplicity of occasioning factors behind a single rule; and multiplicity of rules that are occasioned by one and the same

occasioning factor. The conditions now to be considered all address the question of whether these multiplicities are possible.

Condition no. 6 affirms, in effect, that the first of the above-mentioned multiplicities is not possible:²⁰ the occasioning factor behind a rule must consist of a single feature only. The majority of jurists, we have noted, reject this condition, allowing an occasioning factor to be a complex of several features. At the same time, they insist upon condition no. 10, which states that the features that make up the occasioning factors must function as an indivisible unit (*majmūʿ*, *hayʾa ijtimāʿiyya*). A rule must never obtain when only some of the features are present without the others. Āmidī cites the *lex talionis* against murder as an example of a rule occasioned by a complex of features—killing, intentionality, and hostility. If any one of these features is not present in a particular case, the *lex talionis* does not apply.

The debate over condition no. 6 assumes a highly scholastic character. Those who insist upon this condition argue as follows:

1. The function of occasioning a rule must be regarded as an attribute in its own right. In the case of a complex of features believed to occasion a rule, this attribute must inhere in each of the features separately or in one of the features only or in the complex as a whole. If it inheres in each of the features separately, then each one can be the occasioning factor without the other. If it inheres in one only, that one feature is the occasioning factor and not the others. It cannot inhere in the complex, since the attribute is unitary and the complex is not. Āmidī's reply: the function of occasioning a rule is not intrinsic to any feature or complex of features. We regard features as occasioning factors only because there are indicators that the Legislator takes the features into account in establishing the rules.

2. If the Legislator takes a feature into account, it is because it has some sort of suitability in relationship to the rationale or purpose that he has in mind in establishing a rule. In the case of a complex of features, each of the features will be suitable, or none will be suitable, or some will be suitable but not others. If each is suitable, each is capable of being the occasioning factor apart from the others, so that the entire complex does not function as a unit. If no feature is suitable, then obviously the complex cannot be the occasioning factor. If some are suitable but not others, then, again, the complex cannot function as a unit. It should be noted that this argument avoids the pitfall of the previous argument in not treating suitability as an attribute that inheres in features. Āmidī's reply: the suitability of each feature is not independent of the suitability of other features. The only suitability that is truly independent is the suitability of the entire complex. The disjunction contained in this argument is thus not complete, since it does not take into consideration the

possibility that the complex as a whole may have a suitability that no one of the individual features has.

3. If each feature in the complex is not an occasioning factor in its own right but acquires an occasioning function when joined with other features, then there must emerge, at the point where the feature is joined with the others, a directive from the Legislator that assigns to it its role in the occasioning process, and that directive must in turn be occasioned by something, which brings us back to all the issues that arise in regard to occasioning factors, including the present issue. We thus end up in the trap of circularity. Āmidī's reply: what gives rise to the feature's acquiring a role in the occasioning process is the sheer fact of its becoming joined, *by the Legislator* acting as a free agent, with other features to form a complex. No separate directive from the Legislator is involved.

Condition no. 10 is, as we have noted, affirmed by those who reject condition no. 6. A full explanation of it has been given earlier in this chapter. It seems not to have been much debated, judging from Āmidī's brief account.

Condition no. 12 takes us from the subject of multiplicity of features to that of multiplicity of occasioning factors.²¹ Where an occasioning factor is a complex made up of several features of a case, these features work together to occasion a rule and are all equally indispensable. Where a number of different features are being considered as possible occasioning factors for one and the same rule, each in its own right apart from the other features, the situation is quite different. Whereas in the former situation we have several features working together as a unit, in this situation we have several features, each of which is viewed as working independently of the others. Instead of a single, albeit complex, occasioning factor, we here have a plurality of occasioning factors. Condition no. 12 stipulates that the occasioning factor behind the original rule in an analogy must not be one of a number of factors that work simultaneously to occasion a rule. I have chosen the word "simultaneously" as a translation of *fī sūra wāhida* rather than "conjointly," since occasioning factors cannot, strictly speaking, work together conjointly. If a number of features of a case do work together conjointly to occasion a rule, they are not functioning separately as occasioning factors but are rather functioning as a single complex occasioning factor. Āmidī does allow for the possibility that several different occasioning factors might occasion one and the same rule at different times. What is disallowed here is their simultaneous occasioning of the rule.

Āmidī accepts condition no. 12 and notes that three giants in the speculative tradition within Islamic theoretical jurisprudence—Bāqillānī, Juwaynī, and Ghazālī—accepted it as well. He points out, however, that Ghazālī

accepted it as applicable only to rule-occasioning factors that are extrapolated from texts, as opposed to those that are expressly mentioned in the texts. Āmidī's argument for accepting this condition runs as follows. If a rule is truly occasioned by two factors, then either each of these factors operates independently of the other or they operate conjointly (either because one is dependent on the other or because they are interdependent). They cannot really operate independently of each other, since to say that any occasioning factor operates independently of all other factors is to say that it alone occasions the rule. And if they operate conjointly, then they are in reality a single complex occasioning factor, not two separate occasioning factors.

Condition no. 13, the last in the cluster of conditions presently under consideration,²² is simply presented as controversial, without any mention of names. Āmidī himself rejects it on the ground that there is no compelling argument to support it. There is no solid reason to think that a single feature of a case may not occasion two different rules, and Āmidī is in fact able to give an example where this happens. The intoxicating power of *khamr* occasions the forbidding of the drinking of *khamr* and the making obligatory of the whipping of the offender.

Conditions no. 4 and no. 17, though far removed from each other in Āmidī's order of treatment, have in common a concern with rules considered either as affirmative (for example, "x is forbidden") or negative (for example, "x is not forbidden"). Condition no. 4 requires that the occasioning factor behind an affirmative rule be something that exists,²³ something present as opposed to something absent. To go back to an earlier example, a jurist may not, according to this condition, make statements on the order of "Drinking *khamr* is forbidden because the power to enhance sobriety is not present in it." On the other hand, the condition allows negative rules to be occasioned by the absence of things, as in "Drinking unfermented grape juice is not forbidden because the power to intoxicate is not present in it." Statements of this latter sort are possible because of condition no. 11. A negative rule is, of course, the negating of an affirmative rule. When one says that drinking unfermented grape juice is not forbidden, one is negating a rule to the effect that it is forbidden. There is here a kind of reverse analogizing. Once one has ascertained that the occasioning factor behind the rule that forbids *khamr*-drinking is the power to intoxicate, one may then proceed to form similar affirmative rules for all cases where this power is present (for example, "*nabīdh*-drinking is forbidden") and negative rules for all cases where this power is absent (for example, "the drinking of unfermented grape juice is not forbidden"). This reverse analogizing, it may be noted, is made possible by condition no. 11.

Āmidī mentions no names in connection with the controversy over condition no. 4, but says simply that “one group” (*qawm*) rejected it while “others” (*ākharūn*) accepted it. This language suggests that the condition represented majority thinking. Āmidī himself elects to accept this condition, justifying his choice through the following line of argumentation.

1. To judge something to be the occasioning factor behind an affirmative rule is to affirm its presence in the case to which the rule applies. One can say of something absent only that it *does not* occasion an affirmative rule in the present case. Thus when the power to intoxicate is absent from a particular beverage such as unfermented grape juice, one can only say that this power does not occasion forbiddenness in the case of the beverage in question. This argument suggests that when we speak of the absence of something as occasioning a negative rule we are using the expression “occasioning” loosely. Strictly speaking, what we are speaking of is the failure of something to occasion a rule because of its absence.

2. One correctly asks, “What existed such that this thing occurred?” The question would not be appropriate if the thing that occurred did not hinge upon the existence of something else. Translated into juristic terms, the appropriate question is thus, “What existed such that this act was deemed to be forbidden?” One cannot appropriately ask, “What did not exist such that this act was deemed to be forbidden?”

3. The occasioning factor behind an affirmative rule, if it truly occasions the rule in the sense of prompting the Legislator to establish it, must have something to do with the attainment of a benefit or the avoidance of a harm. Such general rationales become focused in specific things that the one subject to the law must be capable of pursuing or avoiding. The absence of things, however, is not a matter that lies within the province of what persons subject to the law are capable of pursuing or avoiding.

Condition no. 17 is concerned with the negative rule in its relationship with a corresponding affirmative rule.²⁴ Āmidī’s account of the controversy over this condition reveals that there are two types of negative rules. One type arises from the sheer absence of the factor that occasions the corresponding affirmative rule; that is to say, it arises from the reverse analogizing mentioned above. The other type arises from the presence of an impediment (*manīʿ*) that obstructs the operation of the corresponding affirmative rule or from the nonrealization of some condition (*fawāt al-shart*) upon which the applicability of the affirmative rule depends. Condition no. 17 has to do with this second type. It states that this type of negative rule requires that the occasioning factor behind the corresponding affirmative rule actually be present in the case under consideration such that it may be considered to have been

suspended. It seems to have been directed against jurists who considered that an impediment or failure to meet a condition can occasion the negative rule entirely in its own right without entailing the suspension of the occasioning function of some factor that would otherwise give rise to the corresponding affirmative rule.

The controversy over this condition is, again, entirely anonymous, and Āmidī indicates no majority point of view. He himself accepts the condition, arguing that some explanation must be given, in cases where an impediment or failure to meet a condition has given rise to a negative rule, for the nonoperation of the corresponding affirmative rule, for this rule cannot be considered inoperative solely by virtue of the impediment or failure to meet a condition. It must be inoperative by virtue either of the absence of an occasioning factor or of the suspension of an occasioning factor. If it is inoperative by virtue of the absence of an occasioning factor, the impediment or failure to meet a condition has no relevance, no obstructive role. Thus an impediment or failure to meet a condition has relevance only if it *counters* an occasioning factor by virtue of which the rule is otherwise applicable to the case.

The controversies over the remaining conditions (nos. 5, 7b, 18f–k, and 19b) need not detain us. Āmidī accepts condition no. 5 on the ground that a rule of law cannot itself be the occasioning factor behind another rule since it cannot be counted among those things that prompt the Legislator to establish rules; only rationales or features of cases to which they are linked can have this prompting role. Condition no. 7b (7a is noncontroversial) is concerned with a matter that has no practical bearing upon the use of analogy in the formulation of the law, while conditions nos. 18f–k are so quickly ticked off by Āmidī, with only a brief comment on why he rejects them, that one gets the impression that they were not much debated in his time. Condition no. 19b likewise seems not to have been widely debated.

We may now turn, finally, to the conditions of validity of an analogy that pertain to the novel case (*shurūt al-farʿ*).²⁵ In his treatment of these conditions Āmidī returns to the list format and presents to us a list of five such conditions, with a sixth condition—one that he rejects—added as a kind of footnote to his discussion. Of the five conditions, only one is treated as controversial, and this one takes up the greater part of Āmidī's discussion. While the conditions are placed under the heading of *shurūt al-farʿ*, we soon discover that they do not all deal, strictly speaking, with the novel case. The last three of the five, as well as the sixth condition that Āmidī appends to the discussion, have to do with the rule governing the novel case (*hukm al-farʿ*). It is pertinent here to remember that, while Āmidī himself states his intention to

reserve the term *farʿ* for the novel case, other jurists applied this term to the rule governing the novel case, and there is a qualified sense in which this rule is a *farʿ* even for Āmidī.

The six conditions that appear in Āmidī's discussion are as follows:

1. The novel case must be devoid of anything that might create a likelihood that what is called for is the very opposite of the rule that the occasioning factor derived from the principal case calls for. Āmidī notes that this condition is affirmed only by those jurists who reject condition no. 8 among those conditions that pertain to the occasioning factor (see above). That is to say, it is affirmed only by those jurists who consider it possible for an occasioning factor to be present in certain cases without actually giving rise to the rule that it in principle occasions. In such cases the analogizing approach to the formulation of the law will not work.
2. The feature of the novel case that is singled out as the rule-occasioning factor must either be identical with the occasioning factor behind the original rule in the analogy or belong to the same genus as that rule. An example of the former is intoxication, which is present both in *khamr* and in *nabīdh* and constitutes an identical rule-occasioning factor in both cases. An example of the latter is the severing of a limb, which occasions the *lex talionis* and belongs to the same genus as killing—serious harm to the person. Thus, if one knows from a text that killing occasions the *lex talionis*, one may analogize to the effect that when the severing of a limb has occurred retaliation is in order.
3. The rule governing the novel case—that is to say, the rule resulting from the analogizing—must resemble the original rule either in respect to its essence or in respect to its belonging to the same genus. An example of the former is the rule requiring recompense for the life of a *muthaqqal*, which resembles in its essence the rule requiring recompense for the life of a *muhaddad*: the essential element in the former rule—recompense for a life unjustly taken—is present in the second rule as well. An example of the latter is the rule that authorizes a guardian to contract a marriage on behalf of a young woman. It resembles the analogous rule that authorizes a guardian to dispose of the property of a young girl. However, the resemblance is too general to be regarded as resemblance in respect to a common essence: the role of the guardian in contracting a marriage is too far removed from the role of the guardian in disposing of property to allow the two roles to be treated as forming one and the same essence. However, guardianship does form a general category common to the two rules.

4. The rule governing the novel case must not be expressly mentioned in the texts. When it is mentioned in the texts, one cannot seriously claim to have established the rule on the basis of an analogy.
5. The rule governing the novel case must not be in force before the original rule is in force. If a rule thought to have been the product of analogizing can be shown to have been in force while the original rule in the analogy was not yet in force, the rule would necessarily have been in force apart from the occasioning factor behind the original rule. This would render the analogy invalid.
6. The rule governing the novel case must be based, not on the specific terms of a text, but on the general import of a text. Āmidī says that “a group” insists on this condition, implying that the great majority reject it. Examples, he said, can be given of analogizing by Companions of the Prophet that show this condition to be ungrounded. Thus the majority abide by the view that when one formulates the law on the basis of analogies one is going beyond the realm of rules contained within the meaning of the texts.

Āmidī gives the following reasons for accepting the third of the above conditions, the only one that seems to have aroused a significant degree of controversy. Rules of law are not an end in themselves but are rather a means whereby certain purposes relating to human beings may be achieved, whether these purposes be fully evident or not. If there is an affinity between the original rule in an analogy and the derived rule, we shall have the sense that the purpose that is realized through the derived rule is congruent with the purpose that is realized through the original rule. That is to say, since the means (the rules) are congruent, we shall have the sense that the purposes that they serve are also congruent.

There remains a problem with this way of thinking that Āmidī must deal with. If two rules are congruent in the sense that they are both means for the realization of congruent ends, how do we explain the fact that the Legislator mentions only one of the rules in the texts and leaves it to us to discover the other rule through analogizing? Since the Legislator, being wise (*hakīm*), has a reason for everything he does, we must assume he has a reason for conveying the two rules to us in such different ways. Āmidī argues that the reason is that the original rule is somewhat more conducive to his purpose than is the derived rule. If the derived rule was more conducive, it would be mentioned instead of the original rule, and the original rule would be the rule that we would have to derive through analogy. But, objects the adversary, if the original rule is more conducive to the Legislator’s purpose than the derived rule, then we must allow for the more likely possibility that the real reason why the

Legislator has mentioned the original rule and not the derived rule is that he considers that in mentioning the original rule he is *implying* the derived rule, that is to say, he is "hinting at the lower by means of the higher" (*a majori ad minus*, see Part II, chapter 10).²⁶ In this case, the derived rule is not the product of an analogy but is contained within the meaning of the texts. But even if we assume that the Legislator is not intending such an implication, we must allow for the further possibility that he has not mentioned the derived rule because of an impediment to the operation of the rule in the novel case; that is to say, he does not mention the derived rule because it is not in fact applicable to the novel case.

Āmidī's reply: if "hinting at the lower by means of the higher" was involved, the derived rule would have to be applicable to the principal case as well as to the novel case, which is clearly not what obtains in the sorts of cases we are dealing with here. As for the notion that the Legislator has not mentioned the derived rule because of an impediment to its operation, this impediment must relate either to the principal case or to the *sort* of rule that is applied to the novel case. If it relates to the principal case, it can only prevent the operation of the original rule itself; if it relates to the sort of rule that is applied to the novel case, it will necessarily prevent the operation of both the original rule and the derived rule.

ANALOGY: ASCERTAINING THE OCCASIONING FACTOR

The most crucial step in the process of formulating the law on the basis of an analogy is the ascertainment of the occasioning factor behind the original rule. Once this has been accomplished, the next step is, of course, to determine the presence of this occasioning factor in the novel case, after which one may proceed to formulate a rule governing the novel case. These subsequent undertakings follow more or less automatically once the occasioning factor behind the original rule has been ascertained, and there appear, from Āmidī's account, to be few problems relating to them. It is in connection with the first and crucial step in the process that the great problems arise, and we shall turn to those problems in this chapter.

Perhaps the most important outcome of the controversies over the conditions of validity of an analogy is the general agreement among the jurists to the effect that the occasioning factor behind a rule of law must be evident and determinate if it is going to serve as the basis for a rule-producing analogy. Because of this insistence upon evidentness and determinacy, most jurists rejected the idea that a rationale behind a rule of law may be regarded as the occasioning factor. Āmidī himself belonged to the small company of jurists who believed that rationales could be both evident and determinate; most denied this. For the majority, therefore, the occasioning factor proper could only be some feature of the case to which a rule applied: only specific features of cases were characterized by the evidentness and determinacy that the analogizing process required and that rationales lacked. On the other hand, all agreed that rationales were always involved: the particular feature of a case deemed to be the occasioning factor behind a rule must serve the purpose of pinning down, delimiting, giving determinacy to, an otherwise vague and elusive rationale.

Āmidī's lengthy discussion of the process of ascertaining the occasioning factor behind a rule presupposes that the factor that the mujtahid is searching for will indeed be a specific feature of a case. The notion that the occasioning

factor may be a rationale seems, at this point, to have been placed on a back burner. At any rate, the instances in which it could be established that the occasioning rule was a rationale considered apart from specific features of a case seem to have been regarded, by those few jurists who accepted this possibility, as few and far between and not worthy of lengthy discussion.

The whole enterprise of ascertaining the occasioning factor behind a rule presupposes that every case to which a rule applies is a complex of a number of different features and that only one of these (or, in cases where the occasioning factor itself is a complex of features, only some of these) is the occasioning factor of the rule. To use, once again, the classic example, the drinking of *khamr* is an act involving a complex object—*khamr* itself. *Khamr* exhibits a number of different features, of which the power to intoxicate is only one. Others that might be mentioned are liquidity, redness, acidity, a particular taste, and grapeness (that is, being the product of the grape). No one of these six features may be selected by a mujtahid as the occasioning factor entirely on his own judgment. Even if he has a strong personal antipathy toward drunkenness, he may not on his own decide that the power to intoxicate is the occasioning factor. He has no reason to assume, apart from directives drawn ultimately from the authoritative texts, that grapeness, for example, is not the occasioning factor and that he should not proceed to analogize to the effect that all beverages drawn from the grape are forbidden.

How, then, does the mujtahid go about determining which feature is the occasioning factor? From Āmidī's account we learn that the Muslim jurists postulated seven different methods for carrying out this important task.

1. The method of referral to the Ijmā'. For those who accepted the Ijmā' as an indicator of the divine law, any Ijmā'ic consensus to the effect that the intoxicating power of *khamr*, for example, was the occasioning factor behind the rule forbidding the drinking of *khamr* would settle the matter completely. There are, of course, a great many problems connected with the appeal to the Ijmā', but Āmidī does not need to deal with these problems in the present context, since he has done so earlier in the *Ihkām* (see Part II, chapter 5). Accordingly, this first method of ascertaining an occasioning factor receives an extremely brief treatment.
2. The method of referral to the explicit sense of a Qur'ānic or Sunnaic text (*al-nass al-sarih*).
3. The method of referral to an implied meaning of a Qur'ānic or Sunnaic text (*dalālat al-tanbih wa'l-īmā'*). It may be noted that this and the second method both entail reliance upon a Qur'ānic or Sunnaic text; the distinction between the two methods corresponds to the distinction,

made earlier in the *Ihkām*, between what is signified directly by the words of the text (*al-manzūm*) and what is discernible “between its lines” (*ghayr al-manzūm*), between explicit meaning and implicit meaning. We noted earlier that among the different types of implication the Muslim jurists discussed was that of the “textually engendered implication.”¹ It is this type that comes to the fore at this point in the *Ihkām*.

4. The method of elimination of alternatives (*al-sabr wa'l-taqṣīm*). As part of this method the mujtahid first singles out all the features of the case under consideration in an effort to produce an exhaustive list. Then he proceeds to consider which of these features *cannot* be the occasioning factor behind the rule governing the case, in the hope that he will thus be able to eliminate all but one. This last remaining feature will then become the occasioning factor by default, as it were.
5. The method of establishing the “suitability” of a particular feature vis-à-vis a known rationale.
6. The method of establishing the “similitude” of a particular feature. Since the views of the Muslim jurists as to just what this entails differ, I shall postpone attempting further explanation until later.
7. The method of noting concurrence between a particular feature of a case and the rule that governs that case. Here the mujtahid simply observes that whenever a certain rule becomes applicable a certain feature of the case is always present and concludes from this that the feature in question is the occasioning factor.

One observation may be made immediately about these seven methods. Consideration of a rationale plays a definite role in only one of them, the fifth, although according to some jurists it plays a role of sorts in the sixth. As for the other methods, it need not play a role. If a mujtahid has a text that either explicitly states or implies that the intoxicating power of *khamr* is the occasioning factor behind the rule forbidding the drinking of *khamr*, he has all that he needs to declare that this characteristic of *khamr* is indeed the occasioning factor behind the rule and to proceed to analogize on this basis. The same is true if the mujtahid is able to demonstrate the existence at some point in Muslim history of a consensus to this same effect. Moreover, if the mujtahid is able to provide an exhaustive enumeration of all of the features of a particular case and then, on the basis of considerations other than an underlying rationale, eliminate all but one as potential rule-occasioning factors, or if he discovers a sheer concurrence between a feature and a rule, he has managed to accomplish the task of determining an occasioning factor without reference to a rationale.

This is not to say that rationales are presumed to be nonexistent when the above-mentioned methods are employed. To the contrary, it is a firm conviction among most Muslim jurists that every rule of law has a rationale behind it: this conviction is linked to the ardent belief that the Legislator is wise, that is to say, rational (*hakīm*). The point I am here making is that consideration of this rationale need not enter into the process of determining occasioning factors when the methods other than the fifth are employed (and some jurists would add the sixth); in fact, awareness of the rationale—however great the conviction that one exists—is totally unnecessary. This makes the fifth method, and possibly the sixth one as well, unique and especially interesting, and it is not surprising that the fifth method takes a greater amount of space in the *Ihkām* than any other.

The first method, owing to the brevity of Āmidī's discussion of it,² need not concern us here. The second method scarcely receives much more of his attention,³ although some comment on it is in order. Āmidī divides texts that indicate "explicitly" what constitutes the occasioning factor behind a rule into two categories: those that assume the shape of statements on the order of "The occasioning factor behind this rule is such-and-such," and those that employ one of the Arabic particles classified as *hurūf al-ta'īl*. It is significant that he gives no example whatsoever of the former type. We may, I think, seriously doubt whether examples existed. If they did not, then this type of text is a wholly hypothetical construct, and its practical importance for the business of formulating the law is nil. Āmidī gives examples for the second type of text. As one examines them, one notes that two of them—the second and the eighth—do not seem to represent the sort of texts that a mujtahid would use to formulate actual rules of law; they are largely illustrations of the use of the *hurūf al-ta'īl* such as a linguist might supply. The other examples, however, have a more clearly legal relevance.

Āmidī gives examples from both Qur'ānic and Sunnaic texts of the use of five different *hurūf al-ta'īl*: *li-* (whether by itself or in combination with *ajl* in *li-ajl*), *kay*, *min* (as in *min ajl*), *inna*, and *bi-*. No one of these is restricted to a single translation, and certain translations—for example, "on account of," "for the reason that"—will do for several of them.

The examples are:

1. "Perform the *salāh*-prayer *on account of* [*li-*] the setting of the sun" (Qur'ān 17:78).
2. "I have created the jinn and humankind *only for the reason that* [*li-*] they might worship [me]" (Qur'ān 51:56).
3. "I used to forbid you to store the meat of sacrifices *on account of* [*li-ajl*] the advancing troops" (Sunna).

4. "That which God gives as spoil to His messenger...it is for God and His messenger and for the near of kin and the orphans and the needy and the wayfarer, *for the reason that* [*kay*] it might not become a commodity among the rich among you" (Sunna).
5. "It was *on account of* [*min ajl*] [Cain's unjust murder of his brother] that we decreed for the Children of Israel that whoever kills a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind" (Qur'an 5:32).
6. "Wrap them in their wounds, *for the reason that* [*inna*] they shall surely be gathered in the day of resurrection with their jugular veins spouting forth blood, which though the color of blood shall have a fragrance as the fragrance of musk" (a saying of the Prophet concerning those killed in the battle of Uhud). I shall comment presently on my translation of *inna*.
7. "Do not cover his head and do not bring perfume near to him, *for the reason that* [*inna*] he will surely be raised in the day of resurrection in readiness to serve God" (a saying of the Prophet concerning a pilgrim to Mecca whose camel had thrown him to the ground, causing his neck to be broken).
8. "No soul knows what is kept hidden for them in the way of a delight of the eyes [which will be given to them] as a reward *on account of* [*bi-*] what they used to do" (Qur'an 32:17).

The English that I have adopted in translating these passages is in some cases rather awkward. My purpose has been to convey what Āmidī has in mind, not to achieve elegance. My rendering of *inna* as "for the reason that," with "surely" inserted later in the sentence as a token of my recognition of the intensifying role of this particle, is, of course, atypical in the extreme. But without such a translation the point of the two examples containing this particle would be missed. The intensifier here seems to have the function, not only of emphasizing the truth or reality of what is being said, but also of making that truth or reality the ground of what goes before.

The designation of the crucial Arabic particles as *hurūf al-taʿlīl* (particles that indicate the *ʿilla*) does not commit one to the view that these particles indicate an occasioning factor. We earlier noted that "occasioning factor" is but one of at least two possible senses of *ʿilla*. The particle simply indicates the presence of an *ʿilla*. It is for jurists to discuss what this means: occasioning factor or something else. Āmidī has, of course, already argued that when an *ʿilla* is related to a rule of law it has the sense of "occasioning factor." Assuming that this is indeed the case, we may attempt to bring out the full import of the above examples by rephrasing them as follows:

1. The setting of the sun occasions the duty of performing the *salāh*-prayer; or, to be more exact, it occasions the rule that lays down this duty. The occasioning of a rule, let us remember, includes the occasioning of both its original establishment and all of its subsequent applications. One may wonder how the setting of the sun could occasion the establishment of a rule. Here we clearly do not know what the underlying rationale might be and how the setting of the sun gives determinacy to it. But, as I have noted above, when an occasioning factor is specified in the text, the mujtahid is not in need of a rationale in order to ascertain it: he ascertains it solely on the basis of the text. In what sense, we may ask, is the setting of the sun a feature of a case to which a rule of law is to be applied? It is important to remember that we are here dealing with a rule of *ritual* law. The thing that makes performance of the *Maghreb* prayer obligatory may be said to be the setting of the sun.
2. The worship that jinn and humans offer to God occasions his creation of them. Here we do not have the occasioning of a rule of law but of an act of creation, and the occasioning factor here seems to be more a rationale than a feature of a concrete situation. The rationale falls under the general heading of "preservation of religion" (to be considered later).
3. The advancing of a hostile army occasioned the Prophet's forbidding his Companions to store the meat of animals that they had slaughtered as a sacrifice. This forbidding appears to have been a once-only directive, not a rule of law in the broader sense. The storing of meat requires smoking or drying, for which there was apparently not sufficient time in view of the advancing army. (Or were the Muslims themselves the advancing army?) Here we clearly have a case whose particular feature (the advancing army) occasions a rule or directive.
4. The prospect that wealth that might be used for the benefit of those with special needs would become an object of bartering among the wealthy occasioned the rule requiring that a fifth of the spoils of war be placed in the public treasury. Here we perhaps have the greed of the rich as a feature of a case calling for a rule designed to protect the less fortunate.
5. The unjust nature of Cain's slaying of his brother (that is, the fact that it was not carried out as a retaliatory measure or to prevent corruption on the earth) occasioned a divine prohibition of murder. Here we clearly have a case—Cain's slaying of his brother—with a particular feature that occasions a rule prohibiting murder.

6. The death by martyrdom of the victims of Uhud occasioned the Prophet's suspension of normal burial preparations. I am taking the Prophet's words about the victims' glorified state in the day of resurrection to be a reference to their having died as martyrs. Martyrdom—death in a sacred battle—is thus the rule-occasioning feature of the case.
7. The resemblance of the death of the pilgrim to martyrdom, which I extrapolate as the main point of the Prophet's words about the deceased's glorified state in the day of resurrection, is the occasioning factor behind the Prophet's suspension of normal burial preparations.
8. The meritoriousness of deeds done on earth occasions the granting of the "delight of the eyes" in the hereafter. I extrapolate the meritoriousness of deeds as the main point of the phrase "what they used to do."

These rephrasings may or may not reflect the thinking of medieval Muslim jurists about the passages Āmidī cites. They do, however, underscore the highly interpretative character that any attempts to extract law from such passages must necessarily have. Working at the level of "explicit" meaning does not necessarily produce certain results. Even the crucial Arabic particles can be problematic, for particles, no less than other types of words, can according to the Muslim jurisprudents be used to convey "meanings" other than their ordinary literal ones. Thus when one encounters any of these particles in a text, one may make an initial presumption in favor of signification of an *'illa* and then, after having scoured the context and found no indication that some other meaning was intended, proceed to formulate the law on the basis of that presumption. This means that even in utilizing the "explicit" sense of a text to ascertain a rule-occasioning factor one cannot escape the uncertainty factor.

If a mujtahid is unable to ascertain, on the basis of the "explicit" sense of a Qur'anic or Sunnaic text, which feature of a case constitutes the rule-occasioning factor, he may explore the implications of the text. A text may imply that a particular feature is the occasioning factor in any one of six different ways.

1. The text may link a rule of law to a feature of a case by means of the *fā' al-ta'qīb*, the "*fa-* of immediate succession," thus showing that the rule follows directly upon the feature.⁴ From this sequence of feature-followed-immediately-by-rule it is inferred that the feature occasions the rule, and for this reason the "*fa-* of sequence" is once called by Āmidī the "*fa-* of sequence and occasioning." It is important to understand, however, that what the *fa-* signifies as its explicit meaning is immediate succession; the rest is implied. Āmidī divides his examples from the texts into three categories.

A. Qur'anic examples: "As for the thief, both male and female, [*fa-*] cut off their hands" (5:38); "When you rise up for prayer, [*fa-*] wash your faces..."

(5:6). The particle *fa-*, as it appears in these verses, is untranslatable. We do not have any corresponding English word that can be used in a similar position in sentences of this sort. What the *fa-* tells us, according to Āmidī's account, is that the occurrence of theft is followed immediately by the obligation to cut off the hands (an obligation to be discharged by the public authority on behalf of the community) and that the rising up for prayer is followed immediately by the obligation to wash one's face. From these two sequences it is inferred that theft occasions the obligation to cut off the hands and that rising up for prayer occasions the obligation to wash one's face. How the act of rising up for prayer can occasion an obligation in the sense of prompting the Legislator to establish the obligation is, admittedly, somewhat puzzling. An underlying rationale does not come readily to mind. But, then, we faced the same difficulty with the setting of the sun as the occasioning factor behind the obligation to perform the *maghrib* prayer. Again, we must bear in mind that when an occasioning factor is specified in a text it is a given that one does not need to justify with reference to a rationale, however much the existence of some sort of rationale may be presumed.

B. Example from the sayings of the Prophet: "Whoever revives dead land, [*fa-*] it is his." In other words, when a man revives dead land, entitlement to the land follows immediately. From this we infer that revival of dead land occasions the right of property.

C. Examples from reports of the Prophet's deeds: "The Prophet neglected something in the *salāh*-prayer, so [*fa-*] he prostrated himself"; "A goat-herd committed fornication, so [*fa-*] the Prophet had him stoned." *Fa-*, as it occurs within the type of sentence represented by these statements, translates aptly as "so." The sequences are sufficiently clear from the examples themselves. From them we infer (with the required degree of interpretation of related matters) that neglect of a part of the prescribed *salāh*-prayer occasions the obligation to perform a compensatory prostration and that fornication occasions the obligation (on the part of the public authority) to stone the fornicator.

We must in considering these examples keep in mind that matters such as the revival of dead land and fornication are here each considered as *one of a number* of features of a case to which a rule of law is to apply. In the previous chapter we noted that the occasioning factor behind a rule cannot, for most jurists, be the case as such, that is to say, the entire complex of facts or features that make up the case. It is difficult to say how the case of which revival of dead land is a feature is to be described. Perhaps it consists of cultivation of land, of which two prominent features are that the land was previously dead and that it was, through the cultivation, revived. The general

concept of cultivation of land allows one to conjure up other features that exist in all cultivation but that clearly do not have an occasioning role. Similarly, when fornication occurs, one is dealing with a case of sexual intercourse of which extramaritalness is the decisive feature, other features being irrelevant though nonetheless present.

2. The text may describe something as having taken place and as having then been brought to the Prophet's attention, whereupon he immediately enunciates a rule.⁵ Here the particle *fa-* is not employed but a definite uninterrupted succession of events is depicted: a referral to the Prophet, followed immediately by his enunciation of a rule. In presenting the two events in direct succession, the text is implying that the matter referred to the Prophet—that is to say, the event that occurred—is the occasioning factor behind the rule.

Āmidī gives the following example. "A bedouin came to the Prophet and said, 'I am doomed and have caused another to be doomed.' The Prophet said, 'What have you done?' He said, 'I had sexual intercourse with my wife intentionally in the daytime during Ramadān.' The Prophet said, 'Free a slave.'" This narrative, argues Āmidī, indicates that the sexual intercourse (considered here, let us suppose, as one of a number of features of an encounter between a male and a female) is the occasioning factor behind the Prophet's enunciation of a rule concerning expiation. That this is indicated may be explained as follows. We know that the bedouin, in asking his question, was soliciting from the Prophet the enunciation of a rule and that the Prophet in enunciating the rule was replying to the bedouin's question. In other words, the Prophet was not enunciating the rule gratuitously, since this would mean that an apodosis spoken by the Prophet had no protasis and that the enunciation of the rule was delayed past the time when it was called for: this is possible, but quite unlikely.

Now, the protasis in this case is *implied* in the apodosis. It is as though the Prophet said, "Since you had intercourse, [*fa-*] free a slave." We have already learned that when a rule is made to hinge upon a feature of a case by means of a *fa-* the feature may be treated as the occasioning factor behind the rule. Thus this type of textual implication is really an extension of the type that entails the use of *fa-*. It is inferior to it, however, in respect to the degree of probability that attaches to the implied meaning, for where *fa-* is actually used the degree of probability attaching to the connection between the rule and the feature mentioned is much greater and the possibility that the rule was introduced gratuitously much more remote. For sequences can occur without one item's having any real connection with another. For example, if a slave says to his master, "Has the sun arisen?" and the master says immediately thereafter,

"Bring me a drink of water," the slave will not ordinarily take the master's command to be prompted by his question. Perhaps the master has failed to heed the question. In the case of the Prophet, however, failure to heed a question is very unlikely, for in general he did heed questions put to him and did not postpone his answers.

3. The text may mention a feature of a case along with a rule such that if the feature is not assumed to be the occasioning factor behind the rule mentioning it along with the rule makes no sense.⁶ Since the Legislator, being wise and rational (*hakīm*), is above saying things that make no sense, this assumption must, of course, be made.

There are three ways in which this mentioning of a feature of a case together with a rule may occur. First, it may occur without any preceding question. For example, on the Night of the Jinn the Prophet performed ablution with water into which some dates had been cast in order to rid it of its brackishness. The Prophet then said, "[This is] good fruit and pure water." That statement that water is pure entails a judgment that one may perform ablution with it. Accordingly, the juxtaposition of "good fruit" with "pure water" indicates that the presence of the "good fruit" (the dates) as an admixture to the water occasions a rule permitting one to use brackish water freshened with dates for the purpose of ablution.

Second, the mentioning of the feature together with the rule may occur after a question has been raised such that it may be assumed to pertain to that question. For example, the Prophet was asked whether it was permissible to sell ripe dates in exchange for dried ones. He said, "Do ripe dates decrease when they are dried?" They said, "Yes." He said, "Then, it is not permissible" (*fālā idhan*). Āmidī notes that the Prophet's answer contains *fa-*, but insists that even if it did not we would still assume that the decrease of ripe dates as a result of drying is the occasioning factor behind the Prophet's enunciation, since otherwise his linking of the rule to the decrease would make no sense.

Finally, the mentioning of the feature together with the rule may occur after a question has been raised without pertaining directly to the subject matter of the question. That is to say, the Legislator, in enunciating the rule, turns to something that is similar to the subject matter of the question. For example, a girl asked the Prophet, "My father died without fulfilling the duty of pilgrimage, and I have made the pilgrimage on his behalf. Will this do?" The Prophet said, "If your father had left behind a debt and you paid it for him, would this do?" "Yes," replied the girl. The Prophet then said, "The debt to God is more worthy to be paid." The Prophet's words entail a mention of the rule that allows one to discharge an obligation on behalf of a deceased

person along with the mention of debt. We must assume, in order to safeguard the Prophet against nonsensicality, that debt is the thing that occasions the rule.

4. Where a rule entails a distinction between two entities, the text may mention, together with the rule itself, a certain feature as the basis of the distinction.⁷ In order to protect the Legislator against nonsensicality, we must assume that the feature in question occasions the rule and the distinction that it entails. For example, the Prophet said, "One share [of the booty] is for the foot soldier and three shares are for the cavalryman." From this saying, we conclude that the fact of being a cavalryman occasions the part of the rule that awards the greater number of shares to the cavalryman.

5. The text may, in setting forth a rule, mention something other than the rule such that if that thing was not the occasioning factor behind the rule the mention of it would not be relevant to the context.⁸ For example, Qur'ān 62:9 ("O you who believe! When the call is heard for the prayer of the day of congregation, hasten to the remembrance of God and leave your trading") sets forth an obligation to hasten to congregational worship at the sound of the prayer call and in so doing mentions something distinct from that obligation, desisting from trading. If it is not understood that trading is mentioned here as something that occasions failure to hasten to congregational worship and thus the injunction so to hasten, then the mention of desisting from trading has no relevance to what the text is seeking to get across.

6. The text may mention, along with a rule, a feature of the case that is suited to be regarded as the occasioning factor behind the rule by virtue of its congruity with a known rationale or purpose of the Legislator.⁹ For example, the Prophet's saying, "Let not the *qāḍī* render judgment when he is angry," suggests that anger is the occasioning factor behind the disallowance of a judicial decision, for anger confuses the mind and thus is suitable to be regarded as occasioning any rule aimed at the prevention of mental confusion and irrationality. There are two ways of demonstrating why such inferences must be made. First, it is well known that the Legislator, in introducing rules of law, customarily takes into account features of cases that have some connection with a rationale. Thus whenever he mentions a rule along with such a feature one is inclined to make a presumption in favor of his having taken the feature into account in laying down the rule such that it may be regarded as the occasioning factor behind the rule. Second, it is well known that the Legislator never introduces a rule that is devoid of a rationale, for rules are ordained only for the benefit of the creatures, not because the Legislator is obliged on rational grounds to so ordain them but simply because this is his known custom. Thus whenever the Legislator mentions, along with a rule, a feature of

the case that can be linked to a particular rationale, one is led to believe that the feature is the occasioning factor, unless there is an indicator that shows that the Legislator has made a departure from what is apparent.

With this sixth type of implication an awareness of the Legislator's purpose does come into play. However, we are at this point very close to another method of ascertaining the occasioning factor behind a rule—the fifth in Āmidī's order of treatment. We are thus at the periphery of the third method, the point where it shades into the fifth. The difference is that here the feature under consideration is mentioned in the text and the suitability factor is used to argue for its being the occasioning factor, whereas in the fifth method the mujtahid uses the suitability test to select a feature not mentioned in the text as the occasioning factor.

Āmidī records a controversy over the issue of whether it is possible for a feature of a case to be the occasioning factor behind a rule by virtue of a textual implication and at the same time be entirely devoid of any suitability vis-à-vis a rationale.¹⁰ One group of jurists insisted that a feature of a case must always be assumed to have this suitability, whether the rationale was known or not. In this view, if a mujtahid was absolutely certain that a particular feature did not have, or could not even be imagined to have, any such suitability, he would not be able to treat the feature as an occasioning factor, even if he thought that a text implied that it was an occasioning factor. It is important to note that, in this way of thinking, a mujtahid did not need to be absolutely certain that the feature *was* suitable in order to treat it as an occasioning factor; he only needed to be able to presume suitability. If anything stood in the way of this presumption, he had to abandon the feature in question. Thus with the first five of the six types of textual implication described above, positive evidence of suitability is not necessary. Only with the sixth type does such evidence become important. Positive evidence of nonsuitability, however, is another matter.

Āmidī agrees with this way of thinking insofar as it is understood that what one is seeking to ascertain is an occasioning factor and not something else. He reminds his reader that the term *'illa* is taken by a few jurists to mean, not "occasioning factor" (*bā'ith*), but "sign." If one is seeking merely to ascertain what constitutes the sign of a rule of law, then a presumption of suitability of the particular feature of a case that one is considering is not required, unless one is dealing with the sixth type of textual implication.

The fourth method of ascertaining an occasioning factor behind a rule, that of eliminating the alternatives,¹¹ involves a long process of reasoning in which the mujtahid must begin with the most fundamental matters. This is how he must reason. A rule of law is either occasioned by something or it is

not. It is impossible for it not to be occasioned by something for two reasons, since this would be contrary to the consensus of jurists to the effect that a rule may not be devoid of an occasioning factor and since it would be contrary to the observable customary practice of the Legislator. (I shall return to this last point later.) Therefore, a rule of law must be occasioned by something. Now this occasioning factor must be either evident or not evident. The latter cannot be the case—otherwise the rule becomes a demand for mindless obedience, which is contrary to the following three established givens. First, there is more reason to believe that the Legislator establishes rules of law in a rational and comprehensible manner than there is to believe that he establishes rules in a strictly autocratic manner. This conviction, Āmidī seems to be saying, arises from simple observation of the actual practice of the Legislator. Second, if a rule is rationally comprehensible, it will be compatible with standards observable in the behavior of rational people and the adherents of long-standing customs. This is as it should be, since it is axiomatic that the law is compatible with custom, which is the product of the deliberations of rational people. Third, if a rule is rationally comprehensible, it will be more likely to elicit obedience and will thus be more conducive to the attainment of the Legislator's purpose. Therefore, the occasioning factor must be evident.

To continue: the occasioning factor thus shown to be necessarily evident must be among the evident features of the case to which the rule in question applies. These features may be enumerated through careful examination of the case. After having conducted this examination, the mujtahid says, "The occasioning factor behind this rule is either A or B or C or D, these being the sum total of the features of the case under consideration, as determined by my investigation." Having reached this point, the mujtahid then proceeds to the final stage—elimination of the irrelevant features (*hidhf al-ba'd*). This elimination of features must be based on some indicator that shows that the elimination is justified. Having searched for and discovered such indicators, the mujtahid will then say, for example, "I have found indicators that show that A, C, and D cannot be the occasioning factor behind the rule; therefore, it must be B."

Āmidī considers four different methods that the mujtahid may use in the elimination of features.

1. He may show the rule to be operative in a case—a hypothetical one, one gathers—where only one of the features under consideration is present and the others are absent. This method was known among the Muslim jurists as the method of "ruling out" (*ilghā'*). If the mujtahid could demonstrate that the rule was operative when a particular feature was present without other features, he allegedly ruled out the other features as possible

occasioning factors. Āmidī regards this method as not truly constituting an elimination of alternatives, since it entails no real need for an exhaustive enumeration of the alternatives. If the mujtahid establishes that a particular feature occasions a rule when it alone exists, then one has set up a case that must be regarded as the true principal case; and any case in which the feature in question coexists with other features ceases to be the principal case. In other words, the feature that is treated as the occasioning factor has not become such through default but rather through a determination of its occasioning role quite apart from consideration of alternatives.

2. He may show that certain features of the case—those to be eliminated—belong to the category of things we have found the Legislator *not* to have taken cognizance of in ordaining rules, such as tallness, shortness, blackness, whiteness and so on. The phrase “we have found” in this statement is important. Its Arabic counterpart (*alafna*) may be more exactly rendered as “we have become accustomed to.” The point is not that the Legislator would not under any circumstances take cognizance of such things as tallness and shortness in ordaining rules but that he has not, in his past practice insofar as we are familiar with it, taken cognizance of such things. We are here in the realm, not of what is possible or not possible for the Legislator, but of what has been true in our experience of pondering the ways of the Legislator. We are, in short, in the realm of the Legislator’s “custom” (*āda*). What is left after features have been eliminated by this method is then taken to be the occasioning factor. We now have an occasioning factor through default.

3. He may show that certain features of the case belong to the category of things we have found the Legislator to positively rule out as possible occasioning factors for rules of the type under consideration. Here again the phrase “we have found” carries the implications indicated above. “Ruling out” (*ilghā’*), it should be noted, is different from “not taking cognizance of” (*‘adam al-iltifāt*) inasmuch as one rules out only what one has taken cognizance of. Āmidī notes that even a feature that may seem to us to possess the quality of “suitability” (see above) may be ruled out by the Legislator.

4. He may say, “I have carefully examined such-and-such features of the case and have not found in them any suitability vis-à-vis the purposes of the Legislator, nor anything that would allow me even to imagine that they have this suitability.” The phrase “I have carefully examined” (*bahathtu fī*) and “[I] have not found” (*lam ajid*) play a key role in this procedure; they indicate that the mujtahid has done a thorough job of investigating the features in question to see if they have any suitability about them and has found no indication that they do. This negative result warrants a presumption in favor of the nonsuitability of these features. We must not fail to note the contrast

between this method and the method about to be considered. Here the mujtahid uses a *presumption of nonsuitability* as a means for eliminating features from consideration such that a single surviving feature becomes the occasioning factor by default. In the method about to be considered, he arrives at a *presumption of suitability* that then becomes the means for singling out a feature as the occasioning factor; this feature is thus the occasioning factor by virtue of a presumed suitability, not by default. The method presently under consideration, of course, makes sense only within the line of reasoning that Āmidī describes at the beginning of his discussion of the fourth method. Once the mujtahid is able to presume the nonsuitability of all but one feature, he then relies upon the reasoned conviction that the rule in question must be occasioned by something. This conviction leads him to regard the surviving feature as the occasioning factor.

It is not entirely clear how this method works in practice. The investigative process seems to be restricted to the eliminated features to the exclusion of the surviving feature; but how does the mujtahid know which feature to exclude? If he does include the surviving feature in his investigation, then he is apparently not able to reach the point of saying, "I have found no suitability in this feature, nor have I found anything that even allows me to imagine it to be suitable." The last part of this statement suggests that the presumption of nonsuitability must be very strong in order to eliminate a feature and that in the case of the surviving feature the mujtahid has not been able to reach such a strong presumption. On the other hand, it is not as though the mujtahid has reached the position of being able to say in regard to the surviving feature, "I have found this feature to have the quality of suitability," for if he were to say that he would have been employing the method about to be considered, not the method presently under consideration. One gathers that the mujtahid has reached a point where he has not found suitability in *any* feature of the case but has acquired the sense that with all but one feature the sought-for suitability is far more unlikely than is the case with the surviving feature. He has, in other words, come close to being certain that the eliminated features lack this suitability, whereas no such certainty has emerged with regard to the surviving feature. The surviving feature therefore becomes the occasioning factor very much by default.

We may now turn to the fifth method of ascertaining the occasioning factor behind a rule, which seeks to arrive at a presumption in favor of the suitability of a particular feature of the case under consideration. Although Āmidī does not say so, the first part of the line of reasoning entailed in the fourth method obtains here as well. That is to say, the mujtahid must have convinced himself that every rule is occasioned by something and that this

something must be an evident and determinate feature of the case under consideration. What the mujtahid need not do is to make an exhaustive enumeration of all the features of the case for the purpose of investigating each one with a view to eliminating all but one. We are not dealing here with the method of elimination of alternatives. The mujtahid is not seeking a feature of the case that is the occasioning factor by default, a method that requires the mujtahid to consider each feature of the case carefully and to find a reason for eliminating all but one. In the fifth method, the mujtahid applies the suitability test to a particular feature of a case. Presumably, he will sometimes apply the test to several features before coming to a feature that satisfies the test, although his informed hunches will no doubt enable him to arrive at his goal speedily and perhaps even in some cases to focus immediately on the relevant feature. Once a feature satisfies the suitability test, the mujtahid will then, provided he has reason to believe the Legislator has actually taken the feature into account, be in a position to treat that feature as the occasioning factor behind the rule. The proviso just stated introduces a qualification to which I shall return later.

The suitability test requires that the mujtahid have an awareness of the objectives of the Legislator, for "suitable" means suitable in the light of some objective. Āmidī takes his discussion of the fifth method as an opportunity to explore at length, not only the concept of suitability itself, but also the closely related concept of the objectives of the Legislator. Although this latter concept has already cropped up innumerable times in Āmidī's discussions of topics related to analogy (see the previous chapter), it is here that he confronts it head-on. This makes Āmidī's discussion of the fifth method one of the most important in the entire *Ihkām*. Its importance is suggested by the relatively large amount of space devoted to it: thirty-six pages in the 1914 edition as against thirteen pages devoted to the third method and even fewer to the other methods. It is in the implementation of this method that the awareness of the objective behind a rule becomes absolutely crucial.

It is only when the suitability test is central to one's method of ascertaining the occasioning factor behind a rule that an awareness of the Legislator's objectives become crucial. When the occasioning factor is indicated in a text in a manner that does not require that suitability be taken into account, the objective, however much it may be presumed to exist, may be ignored. The objective acquires relevance only as a touchstone of suitability. Since it cannot, in the view of the majority of jurists, function as an occasioning factor in its own right, its only function can be to enable the mujtahid to determine which of several features of a case is the occasioning factor in situations where no consensus or Sunnaic or Qur'anic text has sufficed.

Āmidī divides his discussion of the fifth method of ascertaining the occasioning factor behind a rule into eight sections. The first explores the concept of “suitability.”¹² For Abū Zayd “suitable” meant “rationally acceptable.” For this reason he denied that one could use the suitability of a thing to show that the thing was the occasioning factor behind a rule, even though one might reason that this was the case; for one’s adversary might say, “I do not find this rationally acceptable, and the fact that it is rationally acceptable to someone else can no more properly be used to prove me wrong than can the fact that it is not rationally acceptable to me be used to prove that other person wrong.”

Āmidī chooses to treat the term “suitable” as applicable to “an evident and determinate feature of a case such that there necessarily results from the rule’s becoming operative in conjunction with its presence something that may properly be regarded as the purpose underlying the establishment of that rule.”¹³ In the previous chapter we noted that according to the majority of juristsprudents any feature of a case that occasions a rule must serve to give determinacy to an otherwise indeterminate rationale. Clearly, there is a connection between the notion of suitability and the notion of giving determinacy to an otherwise indeterminate rationale, a connection that Āmidī alludes to later. The classic example of the prohibition against drinking *khamr* will again provide the needed clarification. As we have previously noted, the power to intoxicate, which is commonly regarded as the occasioning factor behind the prohibition, serves to give determinacy to the rationale of preventing mental confusion, thus promoting rationality: it is not just any threat to rationality that is being warded off but the particular threat represented by intoxicants. Clearly, to say that the power to intoxicate gives determinacy to the rationale is tantamount to saying that it is “suitable” in the sense defined here. To borrow from the definition just mentioned: if a prohibition is made to become operative whenever the power to intoxicate is present, a safeguarding of rationality necessarily results, and this safeguarding certainly qualifies, by virtue of its being known to be among the objectives that the law serves, to be regarded as the objective underlying this prohibition. The power to intoxicate thus possesses the quality of suitability.

The second section of Āmidī’s discussion explores what is entailed in the notion of an “objective behind a rule.”¹⁴ The notion of objective (*maqsūd*) is of course closely intertwined with that of rationale (*hikma*), but in the present discussion it is the former that comes to the fore. The objective that the Legislator has in mind in ordaining a particular rule of law may consist of the realization of a benefit, the prevention of a harm, or a combination of the two. The benefit or harm thus realized or prevented will pertain exclusively to the human creature, since God is above benefit or harm. The

Legislator's purpose may also become the purpose of the human creature in that it is especially pertinent to him and in that he, as a rational being, will embrace it. The realization of a benefit or prevention of a harm may occur either in this life or in the hereafter. If it occurs in this life, then the establishment of the rule will have the effect either of *giving rise to* the condition in which a benefit is realized or a harm prevented or of *maintaining* that condition or of *enhancing* it. Thus the Legislator, by according validity to certain property transactions, establishes a rule that gives rise to enjoyment of property; in forbidding murder and requiring retaliatory justice he establishes a rule that maintains security of life; and in making witnesses and a fair dowry a condition of validity of marriage he establishes a rule that enhances marital well-being. As for realization of a benefit or prevention of harm in the hereafter, these consist exclusively of attaining a reward in paradise and escaping from the punishments of hell.

The third section is concerned with the degree to which the establishment of a rule results in the realization of an objective of the Legislator.¹⁵ Such an objective is either certain to be realized as a result of the rule, more likely to be realized than not to be realized, equally likely to be realized and not to be realized, or more likely not to be realized than to be realized. An example of the first is the acquiring of a property right in consequence of the rule that validates a properly transacted sale of property. The legal enjoyment of the property right is a benefit whose realization in consequence of the rule is absolutely certain. An example of the second is the security of life resulting from the *lex talionis*. As for the third, there is no example, says Āmidī, in which the realization and nonrealization of the objective are exactly equal as to their likelihood, though there are examples in which they are approximately equal. For example, the prohibition against drinking *khamr* results in the safeguarding of rationality only now and then, and we find that the frequency of cases where rationality is impaired after drinking is comparable to the frequency of cases where it is not impaired. An example of the fourth degree may be found in the rule that validates the marriage of a nonmenstruating woman. The purpose of assuring procreation and progeny is more likely not to be realized as a result of this rule than it is to be realized.

Those who accept the principle of "suitability" as a method of ascertaining the occasioning factor behind a rule agree that this procedure is valid only if the realization of the Legislator's objective in consequence of the rule is in the first or second degree. However, they allow exceptions to this in certain rare cases, where the realization of an objective is likely in the majority of cases within a larger general category. For example, the realization of the objective of assuring procreation and progeny, though unlikely in the case of

a marriage of a nonmenstruating woman, remains likely within the larger category of marriages of women, for within this larger category, which includes marriages of both menstruating and nonmenstruating women, the former are in the majority. This example, it should be noted, involves a case (the marriage of a nonmenstruating woman) where the realization of the Legislator's objective is unlikely. It cannot be said that its realization is completely impossible, since a nonmenstruating condition is no sure guarantee that a pregnancy will not occur. On the other hand, if the realization of the Legislator's objective is clearly impossible, then exceptions of the sort just mentioned—which involve consideration of a larger category—cannot be allowed.

The fourth section of Āmidī's discussion sets forth a classification of the objectives that may lie behind a rule of law.¹⁶ These objectives, first of all, either relate to universal requirements of human well-being or they do not. If they do not, then they relate either to nonuniversal requirements of human well-being (*hājāt al-nās*) or to those things that enhance human well-being without being requisite to it. Thus we have, at the outset, three major categories of objectives: those that relate to universal necessities, those that relate to human needs that, though genuine, are not universal, and those that relate to the advancement of human well-being beyond the level of actual need.

The first of these categories is further divisible into principal or foundational objectives, which entail consideration of nothing outside themselves, and ancillary objectives, which entail the intention of promoting the principal objectives. The principal objectives are the well-known five: the safeguarding of religion, the safeguarding of life, the safeguarding of rationality, the safeguarding of the blood-line, and the safeguarding of property. Since these objectives both relate to vital necessities and are principal, they stand at the top of the hierarchy of objectives of the law. As for the ancillary objectives, these relate to things that contribute to the perfect realization of the five principal objectives. To use a metaphor drawn from rabbinic usage, the ancillary objectives build a hedge around the weightier matters of the law. For example, the prohibition against drinking an amount of wine small enough not to impair rationality has behind it the objective of preventing people from taking the first step toward drinking larger amounts of wine, thus guaranteeing that the objective of safeguarding rationality will be perfectly realized.

The second main category of objectives is likewise further divided into principal and ancillary objectives. An example of the former is provided by the rule that assigns to a guardian the responsibility of marrying a female minor to a qualified suitor. This rule does not arise out of unalterable or universal necessity, but it does arise out of a very real concern to assure that the

sutor be properly qualified lest he prove to be unsuited as a husband after the girl comes of age. Just why Āmidī places this assurance that the sutor be properly qualified in the category of nonuniversal need is not entirely clear. Perhaps he has in mind the possibility that a sutor who has not been attested as qualified by a guardian can sometimes turn out to be a satisfactory husband or the possibility that in some legal orders marriage of minors may be disallowed altogether. As for an example of an ancillary objective within this second main category of objectives, Āmidī refers us to the rule that requires that social compatibility and adequacy of the dower be taken into account in contracting a marriage on behalf of a female minor. Here an objective is served—assuring the well-being of the female—that is ancillary to a principal objective—assuring the perpetuity of marriage. The latter objective, it should be noted, relates to a need that is not among the absolute requirements of human well-being; otherwise, the divine law would not make provision for the dissolution of marriage. On the other hand, the objective of safeguarding lineage, which is an absolute and universal requirement of human well-being, is served through marriage whether perpetual or dissolved.

As for objectives that relate to advancement of human well-being beyond the level of actual need, these have in common a concern with propriety and nicety (*tahsīn, tazayīn*). Āmidī gives as an example the protection of the status of a legal witness against malignment, which is served by the rule that prohibits slaves from being witnesses on account of their low social standing and subservience to their masters, both qualities unbecoming of a witness. Objectives in this category are not divided into foundational and ancillary objectives.

Of the various categories of objectives just reviewed, those objectives that relate to universal necessities and that are principal are *sui generis* inasmuch as they alone are found in all legal orders (*sharāʿī*) based on a divine law. In other words, these objectives not only *relate to* universal necessities; they *are* themselves universal. No legal order based on a divine law can be imagined to be without them. All other objectives are nonuniversal. These include not only objectives that relate to nonuniversal needs but also objectives that relate to universal necessities *but are not principal*. Since these latter objectives are ancillary to the universal five and since the ways in which they may contribute to the perfect realization of the universal five vary from time to time and from place to place, they lack universality.

Āmidī raises briefly the question of how we know that the universal objectives include the five mentioned and no others. His answer is extremely laconic: we know that they include these five only from our observation of the divine “custom.” I shall postpone attempting to explain what this means until we come to a later section in which he sets forth the reasons for

maintaining that the Legislator establishes rules of law in accordance with objectives having to do with human well-being. At that point, we shall better understand how, in the view of Āmidī and the majority of Muslim jurists, we arrive at a knowledge of the objectives we have just considered.

In the fifth section of his discussion Āmidī turns to a controversy over the issue of what posture was appropriate in the event that a particular feature of a case was judged by its suitability to be the occasioning factor behind a rule but the rule was found to have harmful consequences.¹⁷ Did the harmful consequences cancel out the suitability of the feature such that it should not be considered the occasioning factor? All agreed that if the harm was outweighed by the benefit with reference to which the feature was judged suitable the suitability was not canceled out. However, they differed as to what obtained if the harm was either equal in weight to the benefit or greater than the benefit. Some said that in this case the suitability was canceled out, others that it was not.

I shall not here take the time to examine the arguments on the two sides of the controversy but shall merely state Āmidī's view and supporting argument. According to Āmidī, the suitability was canceled out. He argues that a thing cannot truly be regarded as a benefit if it is countered by a harm that is equal to it or greater than it. If, for example, a man acquired a dirham but, in the process of acquiring it, suffered a loss of something worth one dirham or more, we would not consider him to have acquired a benefit. True benefit can, it seems, arise only out of a surplus of benefit over harm.

The sixth section of Āmidī's discussion is entitled "Concerning the modality of the entailment of a rationale in that which gives determinacy to it" (*fī kayfiyat mulāzamat al-hikma li-dābitihā*).¹⁸ In this section Āmidī is concerned with the question of how it happens that a rationale or objective comes to be realized as a result of tying a rule of law to a particular feature of the case to which it applies. His brief discussion of this question is best understood in conjunction with the definition of the suitable feature given in the first section. A key term in that definition is *yalzam*, which I translated as "necessarily results." It will be helpful to repeat the definition here: a suitable feature of a case is a feature that is evident and determinate such that there necessarily results from the rule's becoming operative in conjunction with its presence something that may properly be regarded as the objective underlying the establishment of that rule.

It is significant that in the present context Āmidī refers to the feature that plays this crucial role as "that which gives determinacy to" (*dābit*), thus recalling a closely related role discussed in the previous chapter. The point I made earlier in this chapter—that there is a connection between the notion

of suitability and the notion of giving determinacy to an otherwise indeterminate rationale—is here well substantiated. What we are learning at this juncture is something that has only been intimated up until now: only if a feature possesses the quality of suitability can it have the role of giving determinacy to a rationale. Or, to state the point slightly differently, a feature can give determinacy to a rationale only if it is such that the rationale comes to be realized as the result of a rule's becoming operative in conjunction with its presence. Thus the power of *khamr* to intoxicate, for example, gives determinacy to the objective of preventing mental confusion by virtue of its being such that this objective comes to be realized as a result of a prohibition's coming into effect whenever it is present.

The task at hand, therefore, is to explain how a rationale or objective comes to be realized as a result of a rule's being operative whenever a certain feature—the one deemed to be “suitable” or “determinacy-bestowing,” depending on where one wants the focus to be—is present. Āmidī mentions two ways. First, the objective or rationale may come to be realized by virtue of its pertaining to something that arises directly from the feature in question. For example, the relaxation of the obligation to perform certain religious duties while traveling is occasioned by the condition of being a traveler. The objective of this relaxation is to prevent hardship in the fulfillment of religious obligations. The objective is realized as a result of tying the relaxation to the condition of being a traveler by virtue of the fact that the objective pertains to something that arises directly from this condition, namely, hardship. Second, the objective or rationale may come to be realized by virtue of there being something about the feature in question that makes its realization mandatory. For example, the rule that declares a sale—that is to say, an exchange of goods involving offer and acceptance—to be valid is occasioned by the occurrence of an offer and an acceptance. The objective of the rule is the production of some sort of advantage to the parties in the transaction. This objective is realized as a result of tying the rule to offer and acceptance inasmuch as an offer and an acceptance make advantage mandatory. There is no advantage that arises directly from the making and the acceptance of an offer: this is a mere verbal exchange that produces no advantage. However, the verbal exchange does establish that advantage to the parties must occur.

Having mentioned these two ways in which the realization of an objective results from tying a rule to a certain feature of the case to which it applies, Āmidī quickly notes that they do not exhaust the possibilities. There are other ways, but these, it appears, are the most common.

The seventh section has been, for me, one of the most difficult sections in the *Ihkām* to integrate into a larger context.¹⁹ It presents a classification of

features deemed to have satisfied the suitability test, taking as the criterion for this classification the mindset of the Legislator. The fundamental categories underlying this classification are presented as follows. A feature that possesses the quality of suitability is either actually taken into consideration by the Legislator or is not. If it is taken into consideration, this is attested either by a consensus or by a Qur'ānic or Sunnaic text or by the fact of the rule's becoming operative in conjunction with the presence of the feature in a particular case attested either by a consensus or by a Qur'ānic or Sunnaic text. If there is nothing that attests to the feature's having been taken into consideration, then it will either appear that the Legislator has deliberately excluded the feature from consideration or it will not.

Āmidī's classification is not concerned with features whose having been taken into consideration is attested by a consensus or by a Qur'ānic or Sunnaic text (although he notes that they are placed under the heading of *mu'aththir*, "efficacious"), since these are features whose identify as occasioning factors is determined by the first, second, and third methods of ascertaining an occasioning factor, not by the fifth method, which is the method currently under discussion. Within the framework of the remaining categories, Āmidī develops a complex schema out of which there emerge five categories that exist in reality, in contrast to categories that lie entirely in the realm of theory.

1. The Legislator may take into consideration the particular feature as it bears upon a particular rule while at the same time taking into consideration the *type* of feature under which the particular feature is subsumed as it bears upon the *type* of rule under which the particular rule is subsumed.²⁰ When this is the stance of the Legislator, the feature in question is said in Arabic to be *mulā'im*, a term somewhat synonymous with *munāsib*, "suitable," which we may render, to convey some sense of a difference, as "consonant."

2. The Legislator may take into consideration a particular feature as it bears upon a particular rule without appearing to take into consideration the feature-type as it bears upon the rule-type. Āmidī applies to this category the term *gharīb*, "alien," "unusual," perhaps "unrecognized."

3. The Legislator may take into consideration a type of feature as it bears upon a type of rule and nothing else. Āmidī applies the term *gharīb* to this category as well, although he points out that this category is inferior in probatory strength to the preceding category.

4. There may be nothing in the authoritative texts to indicate either that the Legislator has given consideration to a particular feature in one of the three above-mentioned ways or that he has deliberately excluded the feature from consideration. Features in this category are classified in Arabic under

the heading of *mursal* (here best rendered as “ungrounded”), a term to which we shall return later.

5. The Legislator may appear to have deliberately excluded the feature in question from consideration. The feature is accordingly in this event classified as “ruled out” (*mulghan*).

The distinction between a particular feature or rule and a type of feature or rule calls for explanation. Āmidī exemplifies the first of the above five categories from the penal law. In establishing the particular rule that prescribes retaliatory killing of the impassioned murderer, the Legislator takes into consideration a particular feature of a case, namely, killing with murderous intent; but in so doing he also views this killing under the more generic heading of an offense demanding retaliation and the rule requiring capital punishment under the more generic heading of the *lex talionis*. The application of the term *mulā'im* to this category may have something to do with the consonance or consistency that the Legislator maintains between the level of the particular and the level of the generic.

Āmidī's example of the second category is drawn from the familiar case of *khamr*-drinking. The fact that a prohibition of *khamr*-drinking becomes operative in conjunction with the presence of the power to intoxicate shows us that the Legislator takes into consideration this particular feature in establishing this particular prohibition, but there is nothing to indicate that he views intoxication under a more generic heading such as mind-destabilization or that he views the prohibition against *khamr*-drinking under a more general heading such as prohibition against drugs. The point seems to be that, whereas in the case of retaliation for killing with murderous intent the Legislator integrates his law-making activity into a higher order, that of a general *lex talionis*, in the case of prohibition against *khamr* he does not seem to do this.

Āmidī's example of the third category has a hypothetical tone about it. The Legislator, in this example, takes into consideration the generic category of hardship such as is common both to travelers and to menstruating women and couples it with a generalized rule prescribing a relaxation of religious duties, which can embrace such particulars as the elimination of two *rak'as* for the traveler or the elimination of the duty of prayer altogether for the menstruating woman.

It is important to bear in mind that the features in all five categories are presumed to possess the quality of suitability. The fifth category is striking since it shows us that a feature may be suitable and yet be excluded from consideration by the Legislator. The Muslim jurists agree that such a feature may not be treated as an occasioning factor. Āmidī illustrates the point with a hypothetical example. A king who is observing the fast of Ramadān

has had sexual contact during fasting hours. A jurist prescribes as expiation for this breach of the fast additional fasting for two consecutive months, even though the normal expiation—the one prescribed in the texts—is the manumission of a slave. The jurist takes as the occasioning factor for his prescription the vast wealth of the king, arguing that the manumission of a slave will be so easily accomplished by the king that he will be able to indulge his sexual appetite freely during the fasting hours. The prescription of two consecutive months of fasting, on the other hand, will more effectively prevent the undesirable behavior, thus promoting an objective of the law (presumably the safeguarding of religion). The problem with this way of thinking is not only that there is no textual evidence that the Legislator has taken vast wealth into account in prescribing expiation for this breach of the fast, but that there is positive evidence that he has ruled vast wealth out of consideration.

The acknowledgement by the Muslim jurists that a feature of a case might be judged suitable and yet be shown from the texts to have been ruled out of consideration by the Legislator underscores a point of great importance. The method of ascertaining an occasioning factor through application of the suitability test must not contravene an explicit textual pronouncement. If a text gives the appearance that the Legislator has deliberately ruled out a feature that satisfied the suitability test, the text must prevail over the mujtahid's judgment. The use of the suitability test is but one step removed from the treatment of rationales as occasioning factors, a procedure that those Muslim jurists who accepted analogy as an indicator of the law for the most part vigorously opposed. The suitability test was employed on the understanding that the occasioning factor must be, not a rationale, but an evident and determinate feature of the case that could be linked to a rationale as well as on the understanding that there was no textual indication of the occasioning factor that could be relied upon without resort to the suitability test. The fifth method of ascertaining an occasioning factor is, after all, a rather subjective procedure. It seeks to ascertain an occasioning factor in the absence of a textual indicator. The mujtahid reviews the features of a case and makes a judgment, on the basis of the suitability criterion, as to which feature is most likely to be the occasioning factor behind the rule that governs that case. He, of course, seeks objectivity, as he must if he is a truly competent and sincere mujtahid. The objectives of the law in the light of which he seeks to determine the suitability of features are not of his own making.

We shall consider in a moment how these objectives are known. Here what is important is that the mujtahid seeks to make use of objectives that are really "out there," really in the mind of the Legislator and not just in his own mind, to arrive at a sense of what is really suitable and what is not. But the

whole effort is, at best, tenuous and capable of producing only a rather low level of probability as compared to more text-based approaches. If the texts are not forthcoming, however, a low level of probability will do. Probability in the realm of law is, let us always remember, binding.

When it is evident from the texts that the Legislator has ruled out of consideration a feature that satisfies the suitability test, it must not be supposed that he has acted without any rationale whatsoever. We have previously noted that a feature that appears to be suitable may turn out to be unsuitable by virtue of the fact that the benefit that comes from the rule established in consonance with it may be outweighed by an unexpected evil. Furthermore, we have noted that the Muslim jurists insist that the rationales of the Legislator are not always known to us, although they also insist that when rationales are unknown we should aspire to know them. This aspiration is part of the ethos within which the mujtahid is to work. Thus the fact that the Legislator's subjecting a king to the same means of expiation as someone less affluent does not seem to serve an objective that the Legislator is known to pursue through other rules but does not warrant the conclusion that it serves no objective at all.

The fourth category in Āmidī's classification brings out a point that represents an important complement to the one discussed in the previous paragraphs. When there is no textual evidence that the Legislator has ruled out a feature, we are not entitled to conclude from its possessing the quality of suitability that he must have taken it into consideration. The fifth category adumbrates the fallacy of such a conclusion, since it shows us that, given the suitability of a feature, it does not follow that the Legislator has taken it into account. The fourth category tells us that we may not conclude that the Legislator has taken a feature into account until we have some sort of textual evidence to that effect. Suitability alone does not suffice. This raises a question. If we must have textual evidence that the Legislator has taken a feature into consideration in establishing a rule before we may treat that feature as the occasioning factor, why bother to apply the suitability test? If we take the view that the Legislator takes into consideration only features that possess the quality of suitability, then is not the fact that the Legislator has taken a particular feature into consideration in itself sufficient proof that the feature is suitable?

It seems to me that we can make sense of Āmidī's entire discussion of the Legislator's "taking into consideration" (*ʿtibār*) a feature only if we understand the central issue in the discussion to be whether or not we have adequate textual grounds for thinking, once a feature has been shown to be suitable, that the Legislator actually took it into consideration. Such grounds

exist only when it can be shown that the rule actually became operative when the feature in question was present in a case attested to by a Qur'ānic or Sunnaic text or a consensus. The fact that the rule became operative when the feature was present does not in itself prove that the feature was the occasioning factor, for other features will necessarily also have been present. But when we can combine this fact with a perception of suitability, we then have a feature that may reasonably be regarded as the occasioning factor. If we single out a feature, establish its suitability, but then fail to show from the texts that the rule became operative in a particular case where this feature was present, we have a feature that is suitable but "ungrounded" (*mursal*), that is to say, without textual grounding. To repeat the main point in language that reflects Āmidī's Arabic: a feature is known to have been taken into consideration by the Legislator "by virtue of the fact of a rule's becoming operative in conjunction with its being present in a case attested to by a Qur'ānic or Sunnaic text or a consensus" (*bi-tartīb al-hukm 'alā waḥqīhi fī sūra bi-nass aw-Ijmā'*). The phrase *bi-tartīb al-hukm 'alā waḥqīhi*, it will be recalled, appears in Āmidī's definition of "suitable." The phrase *fī sūra bi-nass aw-Ijmā'* thus represents an important addition, something relevant, not to a feature's being suitable, but to a feature's having been taken into consideration by the Legislator.

The insistence upon textual evidence that a feature deemed to be suitable has actually been taken into consideration by the Legislator betrays a wish to keep the fifth method of ascertaining an occasioning factor within some sort of textual constraints. The fifth method is not to be an opportunity for a mujtahid to use the principle of suitability as an opportunity to make independent judgments regarding the identity of an occasioning factor. It is not his taking a feature of a case into consideration that is the decisive factor but the Legislator's, and for this he must have textual evidence. It is not sufficient that an analogy proceed from a text-based original rule, although this is a requirement; it is also necessary that the identity of the occasioning factor be linked to a textual datum, the textually attested consideration that the Legislator gives to it. With such a linkage, the analogy remains within the category of a paratextual indicator of the law.

One last point remains to be made with respect to the five categories that have to do with stances of the Legislator. Of these five categories, there is, as we have noted, unanimous agreement among the jurists that features belonging to the fifth category—the "ruled out" features—are not to be utilized in the analogizing process. There is also unanimous agreement that the features belonging to the first category—the "perfectly suitable" features—are to be so used. As regards the remaining categories, the second, third, and

fourth, the opinion of the jurists is divided. I shall not here go into Āmidī's account of the controversies over these categories.

The fourth and fifth categories are reminiscent of categories that play an important role in the fourth method of ascertaining an occasioning factor, the method of elimination of alternatives. However, there appears to be a difference. The five categories here being considered all apply to features of cases deemed to have satisfied the suitability test, whereas the categories entailed in the fourth method seem to embrace features that have not been subjected to this test.

We may now turn to the eighth and final section of Āmidī's discussion of the fifth method of ascertaining occasioning factors.²¹ In this section he takes up the task of defending the principle upon which this method is based—that the suitability of a particular feature of a case together with the fact of the Legislator's having taken it into account in establishing a rule governing that case indicates that the feature is the occasioning factor behind the rule. Or, to make use of key Arabic terms, Āmidī seeks in this section to prove that the combination of *munāsaba* and *i'tibār* is indicative of a feature's being the occasioning factor.

His argument seeks to establish two points: (1) that the rules of law have been established in accordance with objectives relating to human well-being and (2) that when in our study of the texts we observe a particular rule of law to have been operative in conjunction with the presence of a particular feature of the case that may be deemed suitable, in the light of a known objective, to be the factor that occasioned the rule, we must take that feature to be indeed the factor that occasioned the rule.²² In seeking to establish the first of these points, Āmidī is, in effect, providing a theoretical justification for the delineation of the objectives of the law contained in the fourth section of his discussion. Here now, at long last, we have an argument for a principle that has underlain much of what Āmidī has had to say on the whole subject of analogy up to this point, the principle that the law serves objectives relating to human well-being. There is, I believe, more in Āmidī's argument than may at first meet the eye. We can extend it a bit so that it becomes an argument for affirming, not merely that the law serves these objectives, but that these objectives are what Āmidī has said they are in the fourth section of his discussion. In doing this, we are aided by a remark he makes in the fourth section, to which allusion has been made and to which we shall here return.

Āmidī offers two main lines of argumentation in support of his first point. First of all, he contends that the "Imams of jurisprudence" (*a'immat al-fiqh*) were all agreed upon this point, even though their reasons for maintaining it differed. It is common among medieval Muslim writers to designate the

fourth generation of Muslims as the generation of the Imams, so Āmidī seems to be saying that the point enjoys the sanction of the consensus of that generation. The main difference of opinion among the Imams was over the question of whether God's ordaining of the rules of law in conformity with these objectives is a rational necessity (the Muṭazilī view) or merely an observable fact (the Ashʿarī view).

But quite apart from this sanction of consensus the point can, according to Āmidī, be supported by simple human reasoning. This reasoning may take the form of rational reflection either upon the theological proposition that God is a rational being (*hakīm*) or upon certain specific statements in the Qurʾān and Sunna. To say that God is a rational being is tantamount to saying that he takes ends into account in all his works. If one is not willing to go as far as the Muṭazilīs in holding that God takes ends into account as a matter of rational necessity, one can still affirm that God's doing so is, in view of his being a rational being, much more likely than his not doing so. It thus becomes a matter of probability that the rules of law, which are part of God's works, are ordained in accordance with certain objectives; these objectives cannot relate to God himself, since he is above benefit and harm, so they must relate to the creature.

As for rational reflection upon particular statements in the Qurʾān and Sunna, the statements in question are Qurʾān 21:107 ("We sent you only as a mercy for all creatures"), 7:156 ("My mercy embraces all things"), and the Prophet's saying, "There is neither affliction nor adversity in Islam." One cannot say that God sent the Prophet as a mercy for the peoples if the rules the Prophet brings to them are without objectives relating to their well-being, for in this case the coming of the Prophet would be a blight upon the people, not a mercy, since conformity to rules not related to well-being is a hardship; and it could not be said that God's mercy embraces all things. Furthermore, the Prophet's words would not hold true.

Āmidī only alludes in the two parts of this argument to a notion that plays a role of inestimable importance in Ashʿarī thinking about the objectives of the law, namely, that of divine custom. In the Ashʿarī view one need only be an astute observer of the divine custom in order to arrive at the conviction that God establishes laws in accordance with objectives having to do with human well-being and in order to be able to ascertain what these objectives are. As was pointed out in an earlier chapter, the divine custom embraces all those regularities that are discernible in the created order. As we reflect upon the human part of the created order, that is to say, upon human life, we discover patterns of need and aspiration that are as much a part of the divine custom as patterns visible in the nonhuman part of the created order, such

as the daily rising and setting of the sun. We discover that there are recurring human conditions that constitute well-being (*maslaha*, *manfaʿa*) and that there are other such conditions that constitute affliction (*madarra*); and we also discover that certain things are conducive to well-being and certain other things to affliction. We discover, for example, that security of life, rationality, lineage, property, and even worship of God are constitutive of well-being and that certain concrete measures or social arrangements are conducive to their realization. These discoveries in no way depend upon revelation as mediated through prophets.

On the other hand, that such matters as security of life, rationality, lineage, property, and worship are objectives that the Legislator intends to bring to realization in establishing specific rules of law is something we cannot discover apart from revelation, apart from contemplation upon the rules themselves. As we have previously learned, the rules of law have a twofold existence: they exist above temporality as an attribute of God, the attribute of inner speech (*kalām al-naḥs*), and they exist within time as verbal utterances (*kalām al-lisān*) heard upon the lips of angels, prophets, reciters, and others. In perusing the rules of law in the form in which they become manifest to us as concrete verbal utterances, we are perusing a part of the created order and exposing ourselves to a part of the divine custom. It is this sort of perusal, as well as the textual references to divine mercy, love, and forbearing of the sort that Āmidī mentions, that leads us to the conviction that the Legislator has the well-being of the creature in mind in establishing rules of law. Thus *any* objective connected with the well-being of the creature and the prevention of harm is fit (*yashuh*) to be considered as the objective behind any particular rule of law. Here meditation upon the law goes hand in hand with meditation upon those things in the created order that promote well-being and prevent harm.

Here we may return to a statement that Āmidī makes in connection with his delineation of the five universal objectives of the law. That there are but five such objectives and no others, he says, is something we know from the divine custom. What Āmidī is telling us in this laconic manner is that through our reflection upon those things within the order of the divine creation that are constitutive of human well-being we discover that five things are absolutely and universally vital—security of life, rationality, lineage, property, and worship—and that there are no truly universal necessities other than these. Consequently, given our conviction that the Legislator is concerned to promote human well-being, we are able to posit five distinct objectives of the law that relate to these universal necessities. We may go beyond Āmidī's laconic statement and, in the light of what we know about Ashʿarī theology, speak of

another discovery that emerges from our contemplation of the divine custom: certain things promote human well-being without being absolutely vital, things that relate to localized needs or to propriety and refinement. Such a discovery enables us to posit corresponding objectives of the Legislator. Once we have grasped the total array of objectives that underlie the rules of law, we are then in a position to attempt to single out, from the features of a case, the feature that possesses the quality of suitability.

We may now turn to Āmidī's argument for the second of his two cardinal points,²³ which gets to the heart of what he is contending for in the eighth section of his discussion. To repeat the point: when in our study of the texts we observe a particular rule of law to have been operative in conjunction with the presence of a particular feature of the case that may be deemed suitable, in the light of a known objective, to be the factor that occasioned the rule, we must take that feature indeed to be the factor that occasioned the rule. Reduced to simpler terms: when a feature of a case satisfies the criteria of *munāsaba* and *ʿittibār*—that is to say, when it has been judged to be suitable in the light of a known objective of the law and has been textually attested as having actually been taken into consideration by the Legislator—that feature constitutes the probable occasioning factor behind the rule governing the case. Āmidī's argument for this point adopts the familiar disjunctive approach. When a rule of law can be shown to have been operative in conjunction with the presence of a particular feature of the case, then the thing that occasions the rule must be either that feature or something other than that feature that has not become manifest to us. It is not possible for something that has not become manifest to us to be the occasioning factor, since the law would in that case be calling for blind obedience, which is contrary to what has been established to the effect that the law serves known objectives that relate to human well-being. Consequently, the other of the two possibilities is the one that obtains—the feature in question is the occasioning factor behind the rule. True, given the constraints of Ashʿarī theology, the outcome of this argument does not have the character of a rational necessity such that we may have absolute certainty about it. But the argument does establish a definite probability, which is a sufficient basis upon which to formulate the divine law.

But how do we know that probability is a sufficient basis upon which to formulate the law? In order to bring his argument to completion, Āmidī is compelled to provide an answer to this question. It is thus at this point in the *Ihkām* that we are supplied with an argument for a principle that pervades the whole of Āmidī's jurisprudential thought, a principle whose most common Arabic expression is *al-zannu wajibu 'l-ittibā'i fi 'l-sharʿ*, “considered opinion is normative in matters of law.” A considered opinion is a conviction about

a probability. Opinion and certainty are here treated as mutually exclusive. In the realm of opinion, everything is tentative, nothing is absolute, and disagreement is tolerated; in the realm of certainty, the opposite obtains. The whole point that Āmidī is seeking to establish here is that if something is the probable occasioning factor behind a rule of law then any further rule extrapolated from it by way of analogy can only constitute a probable rule of law, in the sense of constituting a statement of what the law, conceived as a datum in the mind of the Legislator, probably is. As I shall have occasion to explain later, this is a strictly exegetical probability.

How, then, does one establish that probability is a sufficient basis on which to formulate the law? Āmidī's answer is: through an appeal to the authority of consensus. In this case, as in so many, it is to the consensus of the Companions of the Prophet that the appeal is made. The Companions agreed that each of their number should abide by whatever opinion his best efforts could produce in regard to important matters such as the number of lashes to be inflicted upon the *khamr*-drinker, the conferment of the caliphate upon Abū Bakr, the commencement of hostilities against the Banū Hanīfa when they refused to pay the *zakāh*, the compilation of the written text of the Qur'ān, the shares of an estate to be awarded to the grandfather and brothers of the deceased, the distribution of stipends to warriors, and so on. Furthermore, certain Companions are famous for having judged cases, or made legal pronouncements, on the basis of opinion, using phrases such as "in my opinion," without any objection from any of the other Companions. All these examples of consensus among the Companions belong, it may be noted, under the heading of the tacit consensus. A particular Companion acts in accordance with his opinion, or judges a case or makes a pronouncement on the basis of opinion, and all other Companions indicate their consent simply by saying nothing. It is important, however, to understand that what the Companions are agreeing to is not the opinion as such, for in that case the opinion would be elevated to the level of an absolute principle, but rather the particular Companion's *acting, judging, or offering counsel* in accordance with his opinion.

But, we may ask, recalling the discussion of the tacit consensus in an earlier chapter of this book, is not the tacit consensus but an indicator of a probability? It was in fact our conclusion in the earlier chapter that consensus was per se, quite apart from its being tacit or not, but a generator of probability, of opinion, not the least of our reasons for this conclusion being the problematic character of the Qur'ānic and Sunnaic evidence for the very authority of consensus. How can something capable of generating more than a probability be taken as a ground for affirming that probability is decisive in

matters of law? Is there not circularity here that vitiates Āmidī's argument? To my knowledge, he does not address this problem anywhere in his writings. I can only surmise that he would recognize the circularity but would still see some value in grounding a principle that bears upon the work of the individual mujtahid in a probable consensus of the most revered of all generations of Muslims or would see the principle as vindicated by other considerations that he does not choose to go into in the present discussion, such as the textually well-established principle that human beings are to seek to obey God and the Prophet in all that they do—a principle that can hardly be realized in actual life if full exegetical certainty is required for every rule of law.

Having presented in full his main argument for the two cardinal points, Āmidī must, in accordance with the usual format of Muslim dialectic, deal with objections raised by the opposition.²⁴ I shall here enumerate what I consider to be the most salient of these objections,²⁵ indicating Āmidī's reply in each case.

1. The rules of law cannot be said to entail rationales or objectives having to do with human well-being for the following reason. These rules are the handiwork of God, and if God's handiwork entailed such an objective, then he would not have created disobedience and the capacity for it, nor would he have caused prophets to die while granting respite to Iblis, nor would he have imposed belief as an obligation upon a person he knew would die in unbelief, nor would he have restricted the existence of the world to the time of its actual existence as opposed to the time preceding or the time following, nor would he have created the unbeliever as one who is miserable in this world and is perpetually in torment in the hereafter, nor would he have made the knowledge of himself a duty for those who know him not, considering that the very awareness of this duty presupposes a knowledge of God. Now in all these cases there can clearly be no objective having to do with human well-being. Āmidī's reply: assuming that in these particular cases it is indeed inconceivable that God should have had such an objective in mind, one possible response is to point out that what is being claimed is simply that God has such an objective in mind in those cases where this is conceivable, not that he has it in mind in all cases without exception. On the other hand, it is not inconceivable that in those cases that have been mentioned God had such an objective in mind but the awareness of it eludes us in our present state of limited knowledge.

2. If God's handiwork serves an objective that relates to human well-being, then, given this objective, God's acting in accordance with it is either necessary or not necessary. If it is necessary, then the Lord is acting under constraint, which is unthinkable. If it is not necessary, then, given the objective,

God may or may not act in accordance with it. The question then arises: what causes one of these possibilities to prevail over the other in a given instance? If we say "an objective," then we are back where we started: the Lord is acting under constraint. If, on the other hand, the actualization of one of the two possibilities does not depend on an objective, we have won our case, for this is precisely what we have been seeking to prove. Āmidi's reply: God's acting in accordance with the objective is necessary as a consequence, not of the objective itself, but of a capacity and a will to act in accordance with the objective, so that the Lord Almighty is not acting under constraint.

3. The objective behind a creative act of God must itself be either created or uncreated. If the latter, then that which the act produces must be uncreated, which is impossible. If the former, then the creation of that objective must itself be due to some objective or not due to an objective. If it is due to some objective, we have an infinite regression. Therefore, it must be due to no objective at all, which is exactly what we are seeking to prove. Āmidi's reply: the objective is sufficient unto itself, requiring no objective outside of itself. There is, therefore, no infinite regression in our position.

4. Whereas a rule that proceeds from God is uncreated, the objective behind a rule is not, since only God and his attributes—including the attribute of speech that embraces God's rules—are uncreated. Now if the objective behind a rule belongs to the created order and the objective is the thing that prompts the rule, it follows that something created has prompted something uncreated, which is impossible. Āmidi's reply: one cannot describe a rule as God's uncreated speech without qualification. Rather, one should describe it as an impingement of God's uncreated speech upon the realm of human affairs, and this impingement is itself part of the created order.

5. If it is more fitting for God to act on account of an objective than not to act on account of an objective, then his perfection derives from something other than himself. If God's acting on account of an objective is not more fitting than his not so acting, then it makes no difference whether he acts on account of an objective or not. Āmidi's reply: it is more fitting for God to act on account of an objective, but the objective relates to the creature, not to the Creator, and God's perfection is in no way affected by what relates to the creature.

6. An objective is indeterminate, and for God to hinge the rules of law upon objectives such that the objectives must be taken into account in the process of formulating the law (as is necessary when the fifth method of ascertaining occasioning factors is employed) would therefore amount to impeding the creature's effort to live by the rules. This is contrary to Qur'an 22:78: "He...has not laid upon you in religion any hardship." Āmidi's reply: if, to the contrary, the objectives upon which God hinges his rules are either

determinate in themselves or given determinacy by being related to specific features of cases, then there is no impediment. On the other hand, Qur'an 22:78 is referring, not to hardship in general, but only to hardship that is truly detrimental to human beings. A certain amount of hardship is entailed in the process of formulating the law, but this is a hardship that has a benign purpose, namely, granting reward in the hereafter.

7. The objective behind a rule can be realized only in consequence of the prior operation of the rule. What follows as the outcome of a rule cannot have anything to do with the occasioning of the rule, since only what precedes the rule may occasion it. Āmidī's reply: to say that something occasions a rule is to say that it supplies the motive for establishing the rule; it need not, therefore, actually precede the rule.

8. If a given rule has some objective intended by the Creator, then the Creator would have seen to it that the rule brought about the realization of the objective in a clear and decisive manner; for if God acts in accordance with an objective, then it is only obvious that he will see to it that the objective is realized in a decisive manner that will leave no doubt in our minds. Now, when we look at the actual rules of law, we find that quite the opposite is true: these rules do not bring about the realization of objectives in a manner that leaves no doubt in our minds. Therefore we must conclude that God did not establish the rules in accordance with objectives. Āmidī's answer: the rules may not bring about the realization of objectives in a manner that leaves no doubt in our minds whatsoever, but they do bring about the realization of objectives in a manner that is sufficiently convincing to engender in our minds a sense of the probability that they were established in accordance with those objectives.

9. The Lord Almighty is capable of achieving the alleged objective behind a given rule without establishing the rule; otherwise he is impotent, which is unthinkable. Therefore, he does not need to establish the rule in order to achieve the objective. Āmidī's reply: while it is true that God is capable of achieving the objective apart from the rule, it does not follow that he cannot elect to achieve it by means of the rule.

10. One looks for objectives only in the actions of those who have a predilection for something, such as the attainment of a benefit or avoidance of a hardship. But God cannot be said to have such predilections; therefore we may not properly look for objectives in his establishment of the rules of law. Āmidī's reply: one need not attribute such predilections to God in order properly to look for objectives in his actions. Rather, one need only be persuaded that the presence of objectives behind his actions does not contradict some established truth or that observation of the divine custom (that is

to say, the real world as constituted by God) renders the presence of objectives probable.

11. One looks for objectives only in the actions of those who may be judged blameworthy if their actions are devoid of objectives. But God may not be judged blameworthy. Āmidī's reply: blame is appropriate only if it has been established that there is an obligation to take objectives into account. In the case of God no such obligation exists.

Two methods of ascertaining the occasioning factor behind a rule now remain to be considered, the sixth and the seventh in Āmidī's order of treatment. The sixth method is the method that utilizes the principle of "resemblance" (*shabah*). Āmidī divides his discussion of this method into three sections. The first of these deals with the definition of "resemblance,"²⁶ and as we begin to read it we soon become aware that "resemblance" means different things to different jurists. Āmidī acknowledges at the outset of his discussion that the term, taken in its ordinary nontechnical sense, applies to all analogies in the sense that whenever a feature of a case deemed to be the occasioning factor behind a rule is found in some other case a resemblance arises between the two cases. However, it is not this ordinary sense that the jurists have in mind in speaking of "resemblance" as a means of ascertaining an occasioning factor. Since they attribute different technical senses to the term, the issue of what constitutes similitude is essentially terminological.

Āmidī lists five different definitions of "resemblance" that were in circulation among the jurists.

1. "Resemblance" occurs when a novel case that vacillates between two principal cases resembles one of the two principal cases more than the other. In this definition, it is not sheer resemblance—that is to say, resemblance in the ordinary sense—that is decisive but the *degree* of resemblance. The novel case shares a feature or features with both of the two principal cases and in that sense resembles both cases; but what brings "resemblance" in the technical sense proposed by this definition into play is the *greater* resemblance of the novel case to one of the two principal cases than to the other. Āmidī considers this definition inappropriate, for what the mujtahid is doing is weighing two possible analogies against each other to determine which is the stronger indicator of the law. This enterprise properly belongs under the heading of "weighing conflicting indicators," which we shall consider later. "Resemblance," in the sense of "higher degree of resemblance," therefore cannot be a factor in setting up a particular analogy, which is the enterprise presently under consideration.

2. "Resemblance" occurs when something is known from the texts to be the occasioning factor behind a rule but the rule as yet lacks application to

particular cases by virtue of it. For example, one knows from Qur'ān 5:95 that if one kills a wild animal in sport while on pilgrimage one must sacrifice a domestic animal as expiation; but this is a general knowledge that is lacking in application to a particular case. The "resemblance" proposed here is difficult to make out, although it seems to have something to do with a congruence between an occasioning factor considered in the abstract and the particulars of actual cases. Āmidī considers this definition also to be inappropriate, since the "resemblance" it proposes relates to the application of a rule, not to the ascertainment of an occasioning factor.

3. "Resemblance" is a partial likeness between two different features of a case, one of which seems more likely to be the occasioning factor behind the rule governing the case than the other. Āmidī regards this definition as inappropriate in that the determination of the occasioning factor requires resort to the suitability test, which is the distinguishing mark of the fifth of his seven methods. Suitability, he seems to be saying, must be the factor that tilts the scale in favor of one of the two features. Resemblance in this definition seems to be a device whereby features are collected together, only one of them in the end becoming the occasioning factor.

4. "Resemblance" occurs when two cases are linked together by a common feature that, while not possessing the quality of suitability, is concomitant with something that does possess that quality. This, says Āmidī, is the definition of Bāqillānī. It clearly treats similitude as tangential to suitability while still distinguishing it from it. Āmidī regards this definition as the most viable after the following one.

5. "Resemblance" is that which leads one to suppose that a particular feature of a case is suitable when there is no direct evidence of its suitability. AS we shall see, this resemblance arises from the resemblance of a feature whose suitability has not been firmly established to features whose suitability has been firmly established. We may, I think, appropriately apply the Arabic cognate term *shibh* (which Āmidī does not actually do) and speak of the feature in this case as a *quasi-suitable* feature. (In modern Arabic one can comfortably make use of the expression *shibh munāsib*.) It is important to understand, however, that quasi-suitable is, in Āmidī's mind, entirely distinct from suitable.

The concept of quasi-suitability is based on the following reasoning. The suitability of a feature of a case is either evident or not evident. If it is not evident after a thorough investigation by a competent mujtahid has been completed, then two possibilities arise: either the feature in question is among those things that we have found the Legislator not to have taken into consideration in establishing any rules of law, such as tallness, shortness,

blackness, whiteness, and so forth, or the feature in question is among those things that we have found the Legislator sometimes to have taken into consideration in establishing rules of law and sometime to have disregarded. If the latter is the case, the feature is said to possess the quality of resemblance; or, to use the term I have suggested, it is said to be quasi-suitable. The feature is thus named because it stands midway between the feature that is consistently taken into consideration, that is to say, the suitable feature (*Āmidī* obviously does not concern himself here with the feature that is suitable but not taken into account), and the feature that is never taken into consideration. The attitude that the mujtahid must adopt toward this feature after his investigation has been completed is ambivalent: insofar as he has not discovered positive evidence of the feature's suitability he must deny its suitability, but insofar as he has noted that the Legislator sometimes takes it into account in establishing rules he must hold back from denying its suitability. It is this latter posture that warrants our describing the feature as quasi-suitable, for it resembles the suitable feature in respect to its being at least sometimes taken into consideration and to the mujtahid's not being able dogmatically to deny its suitability.

Āmidī concludes the first section of his discussion by noting that, of the various definitions of "resemblance" he has surveyed, this last definition is the one that best suits the needs of Muslim dialectic and the one that he and the majority of jurists therefore favor.

The next question *Āmidī* must deal with is the question of whether resemblance in the sense just defined²⁷—that is to say, quasi-suitability—is indicative of a feature's being the occasioning factor behind a rule, if the rule can be shown to be operative in conjunction with the feature's presence. His answer is that quasi-suitability is an adequate ground for regarding the feature's being the occasioning factor as probable. His reasoning is as follows. Let us say that we observe a particular rule to be operative in conjunction with the presence of feature *A* and feature *B*, and let us say that feature *A* is quasi-suitable while feature *B* is among those features that we find the Legislator never to take into consideration. Now the rule exists either on account of a benefit to human beings that will result from it or not on account of such a benefit. The latter is impossible, since it has already been established that rules of law are never devoid of an objective that relates to human well-being. Therefore the rule in question can only exist on account of some benefit. Now this benefit must be connected in some way either with feature *A* or with feature *B*, since these alone have been identified as features in conjunction with which the rule becomes operative. Quite obviously, the overwhelming probability is that the benefit is connected with feature *A*, since feature *B* quite definitely

does not possess the quality of suitability, while feature *A* at least admits of the possibility of being suitable. With this probability, the mujtahid is entitled to treat feature *A* as the occasioning factor and to construct an analogy on the basis of it. Probability, Āmidī again reminds us, is decisive in the realm of law.

The third and last section of Āmidī's discussion deals with a controversy that appears to have arisen within Āmidī's own school, the Shāfi'i-Ash'arī school.²⁸ The controversy takes us into the subject of the Legislator's mindset and is therefore reminiscent of, if not a sort of repetition of, the seventh section of Āmidī's discussion of the fifth method of ascertaining an occasioning factor. The issue in this controversy is whether, when the Legislator is looking at a *type* of quasi-suitable feature of a case as it bears upon a *type* of rule without looking at a particular feature as it bears upon a particular case, the feature in question has any probatory strength. When this mindset obtains in relation to a suitable feature, the feature, it will be recalled, is classified as *gharīb*. It will also be recalled that there was disagreement over the probatory strength of this category of feature. Now a similar disagreement arises in connection with the quasi-suitable feature. Āmidī notes that some of his fellow-schoolmen maintained that a quasi-suitable feature that belonged to this category did not have probatory strength, whereas a suitable feature that belonged to the same category did. He appears not to share this viewpoint, however, because he raises objections against it that he does not attempt to refute.

The seventh method of ascertaining an occasioning factor I have called the method of noting concomitance (*dawarān*) between a particular feature of a case and the rule that governs that case.²⁹ It is called in Arabic *ithbāt al-illa bi'l-tard wa'l-aks*: "establishing [the identity of] the occasioning factor on the basis of co-presence and co-absence." "Co-presence" and "co-absence" represent my attempt to express the import of *tard* and *aks*, considered as technical terms. "Co-presence" refers to the fact that when a rule is present (that is to say, operative) a certain feature is also always present or vice versa. "Co-absence" is simply the reverse side of co-presence: when a rule is absent (that is to say, inoperative) the feature is also always absent or vice versa. The two concepts are thus complementary. Together they constitute what I am calling, following Malcolm Kerr, "concomitance."³⁰ Āmidī illustrates this method with the example of wine and wine-vinegar. The rule concerning wine is that it is forbidden. This forbiddenness does not, however, attach to vinegar. We observe that when wine changes into vinegar, its intoxicating power disappears; and from this we conclude that this intoxicating power is the factor that occasions the forbiddenness.

Some Mu'tazilīs, according to Āmidī, regarded this method as absolute proof that a feature of a case was the occasioning factor behind the rule governing the case. Others, including Bāqillānī, considered it productive of probability, while still others considered it to be totally without probative strength. Āmidī aligns himself with the third group. After critiquing two arguments for their point of view, which he regards as weak, he advances the arguments he believes to be effective. First of all, it is possible for something to be inseparable from the occasioning factor behind a rule without itself being the occasioning factor. An example is the distinctive smell of wine. Since this smell is inseparable from the intoxicating power of wine, it, like the intoxicating power, is concomitant with the forbiddenness of wine; but it would be erroneous to regard it as the factor that occasions the forbiddenness of wine. Second, even if there was a single feature of a case that alone was concomitant with a rule, we could not conclude that the feature occasioned the rule; for when two things are concomitant either one of the two things can occasion the other. Concomitance alone does not determine which is the occasioning factor. For this we need to turn to other methods.

THE DEFENSE OF ANALOGY

It was not a foregone conclusion among medieval Muslim jurists that analogy was to be counted among the indicators of the divine law, the instruments whereby the law became manifest. While the majority accepted it, some, even within the ranks of Sunnī Islam, did not. Since the latter included persons of acknowledged greatness and competence whose views demanded to be respected, the most zealous advocates of analogy could not go so far as to make acceptance of this indicator of the law a touchstone of orthodoxy, thus casting upon its detractors an aura of heterodoxy. Analogy was thus assured a place among the legitimate topics for debate *among Muslims*.

The fact that renowned jurists were capable of expounding an entire corpus of law without regarding analogy as among the methodological instruments that produced this law must give us pause in the face of claims that analogy was the chief instrument for the development of law in Islam. When one looks at the law actually expounded by the various schools, one finds that it makes rather little difference, in terms of substantive doctrine, whether a school accepts analogy among the indicators of the law or not. Differences in doctrine indeed existed; but one does not find the doctrinal differences between schools with conflicting attitudes toward analogy to be spectacularly greater than those that existed between schools that shared a common acceptance of analogy. The dispute over analogy is therefore largely a dispute between differing ways of providing theoretical justification for a shared body of legal doctrine. It is, in particular, a dispute between jurists who wish and believe it possible to ground all doctrine within the meaning of the texts and jurists who regard a transcending of that meaning, through analogy, as inevitable. Just how, in practical terms, the two different camps go about applying their respective approaches to particular rules of law is a subject one would have to explore in books of law (*fiqh*). Here we shall concern ourselves solely with the debate that occurred at the level of pure methodology.

Those who rejected analogy did not do so out of any lack of sophistication in matters of law. Their critiquing of the analogizing process provided, to the contrary, a stiff challenge that the advocates of analogy had always to reconsider generation after generation. The sophistication of the challenge required that the defense of analogy be among the primary concerns of any jurisprudence that sought to uphold it. Accordingly, Āmidī's account of the controversy over analogy is imbued with the spirit of apologetic.

The account covers six distinct controversies. The first three take up different aspects of the central issue of whether analogy has any validity at all. In these controversies, which occupy seventy-seven pages in the 1914 edition of the *Ihkām*, we find the advocates of analogy pitted against its detractors. The remaining three controversies, which fill only ten pages, dwell on issues relating to how far the use of analogy, if accepted in principle, should be carried. In these controversies, therefore, we find different groups among the advocates of analogy pitted against each other. The larger number of pages devoted to the first three controversies shows that the defense of analogy is the primary concern of the section of the *Ihkām* we are about to explore.

The issue in the first controversy is whether it is possible in purely rational terms for analogy to be an indicator of the law.¹ Stated in terms closer to Āmidī's Arabic, the issue is whether it is possible in rational terms that compliance with rules established on the basis of analogy should be a duty enjoined upon us by God. The key Arabic phrase in Āmidī's statement of the issue is *al-ta'abbud bi'l-qiyās*: is *al-ta'abbud bi'l-qiyās* possible in rational terms? The usage given to this phrase within Islamic theoretical jurisprudence has no parallel, known to me, in modern Arabic and seems to be somewhat rare even in classical Arabic. In at least one passage in the *Ihkām* the Legislator is the subject of the corresponding verb:² *qad ta'abbadtukum bi'l-qiyās*. A commentator on the *Mukhtasar* of Ibn al-Hājib (which, as I noted in the introduction, was based largely on the *Ihkām*³) defines *al-ta'abbud bi'l-qiyās* as "the Legislator's making it a duty to act in conformity with what analogy dictates."⁴ Taking this definition as a clue, one may translate *qad ta'abbadtukum bi'l-qiyās* as "I have imposed upon you the duty of acting in conformity with what analogy dictates." This rendering is confirmed by Āmidī's speaking, in the *Muntahā*, of *al-ta'abbud bi'l-qiyās* as something that would, if there is such a thing, come from God.⁵

It is a matter of some interest that this phrase appears in discussions in which the use of analogy is in dispute and not elsewhere in the *Ihkām*. Āmidī makes it clear that one may correctly speak of *al-ta'abbud bi'l-nusūs*,⁶ that is, *ta'abbud* to the effect that one is to conform with the dictates of the Qur'an and Sunna, and presumably one could speak of *al-ta'abbud bi'l-ijmā'*. Yet

this expression never appears in sections of the *Ihkām* in which the focus of attention is upon either Qur'ānic or Sunnaic texts or upon the *Ijmā'*. We may guess that it emerges in discussions of analogy simply because some jurists—a minority, admittedly—found it incredible that God should place man in subjection to what, to them at least, was nothing other than human judgment. That God should place man in subjection to the *Ijmā'* was, however problematic, apparently much more acceptable to these jurists; and that God should place man in subjection to the Qur'ān and Sunna was never even questioned.

In order to adhere to the terminology I have adopted throughout this book, I shall speak of the issue here under consideration in terms not of how God can make it a duty for man to conform to the dictates of analogy but of how analogy can be considered an indicator of the law. The core issue is whether the analogy has the status of a *dalīl*, or, to use the common alternative, of a *hujja*. While Āmidī does not introduce the issue as an issue having to do with the *hujja*-status (*hujjiyya*) of analogy, he does in a number of instances in the course of the discussion refer to it in this way. To phrase the issue in these terms is, of course, to recall the discussion earlier in the *Ihkām* of the *hujja*-status of the *Ijmā'*.

Is it, then, possible in rational terms for an analogy to be an indicator of the law? Āmidī marshals an impressive array of personages on the side of an affirmative answer: the pious ancestors (*al-salaf*, that is to say, the Muslims of the first, second, and third generations), as well as the greatest personages of the fourth generation: Shāfi'ī, Abū Hanīfa, Mālik, and Ibn Hanbal. To these Āmidī adds the majority of the jurists and theologians. To place any idea under the aegis of the pious ancestors is, of course, to suggest that any opposing idea constitutes heresy. However, it is noteworthy that Āmidī does not claim a consensus of the pious ancestors for the affirmative position, at least not explicitly. We should not therefore suppose that he is branding adherents of the opposing view heretics. These include the Shī'īs, Nazzām, and a group from the Baghdad wing of the Mu'tazilī school. Finally, certain jurists not only take the affirmative position but go even further: they regard it not only as possible on rational grounds that analogy is an indicator of the divine law, but as necessary on rational grounds. Prominent in this group are Qaffāl and Abū'l-Husayn al-Basrī.

Āmidī himself opts for the first of the above-mentioned positions, supporting his choice with the following arguments.

1. All rational persons agree that it would be entirely in order for the Legislator to declare, "A judge must not render a decision when he is angry because anger is among the things that cause confusion in one's perception and

understanding. Now, wherever something is present that has the same effect as anger, you are to use analogy to arrive at an appropriate rule." It would also be in order for him to say, "I forbid you to drink *khamr*, and to the extent you are convinced that the occasioning factor behind this prohibition is the power to intoxicate, which prevents one from thinking about God and stirs up lust, aggression, envy, and so on, you must treat any other thing that has this feature on the analogy of *khamr*."

2. A rational person, if his reasoning is sound, perceives things that are initially beyond his reach from indicators that are immediately present. For example, one may observe a man coming out of a house in which a corpse is discovered, with a bloody knife in his hand, and consequently come to the realization that the man has committed a murder. Similarly, one observes that the Legislator has established a rule to govern a particular case and at the same time observes some feature of the case that is suited to be regarded as the factor occasioning the rule and becomes convinced after careful investigation that there is nothing to rule out its being the occasioning factor. Then one observes that this same feature is present in some other case and, having determined that there is nothing to prevent its being taken as operative in the new case, becomes aware of a rule that is applicable to the new case. This awareness of a rule that was not initially known arises from observation of the various givens just mentioned. There is nothing in all this that is in conflict with the requirements of reason. To the contrary, this movement from observed givens to an awareness of something initially unknown is very much in keeping with the requirements of reason.

Having stated his central argument, Āmidī turns to an objection to his argument, then to counterarguments. The objection runs as follows: Āmidī's argument, it is claimed, presupposes that the formulation of a rule of law on the basis of an analogy is appropriate only if the mujtahid has conducted a careful search for other indicators that may bear upon the case at hand and has become certain that no indicator is to be found that outweighs the analogy in probative strength. But one can never reach such certainty since one can never be sure, given the vastness and intractability of the texts in which the indicators must be sought, that one has not missed an indicator. Āmidī's reply: if an analogy makes it probable that a benefit will be attained through the derived rule, then it constitutes an indicator, even if it has less probative strength than some other indicator as yet undiscovered; for it is not repugnant to human reason that the mujtahid should have a duty to proceed to formulate the law on the basis of the indicator he has found as a result of his best efforts so long as a stronger indicator remains undiscovered. Moreover, if the above objection is valid, then it would not be possible to formulate the law on

the basis of any indicator that did not produce full certainty, including textual ones, since the mujtahid, even in working with texts, must always face the possibility of having missed an indicator of greater strength.

Of the twenty-five counterarguments Āmidī reviews, I shall here consider only eight, along with Āmidī's responses.

1. Reason dictates that the use of analogy is valid only if the Legislator can be shown to treat similar things similarly and dissimilar things differently, for only if this is the case will analogy be in compliance with the requirements of reason. But in fact the textual evidence shows us that the Legislator treats similar things differently and dissimilar things similarly. For example, he rules that the fast of Ramadān is violated by an emission of semen but not by urination; he makes fasting obligatory for the menstruating woman but not the *salāh*-prayer; he prohibits gazing upon an unattractive elderly free woman but permits gazing upon a beautiful slave girl; he decrees cutting off the hand of the larcenist but not the hand of the one guilty of major extortion; he accepts two witnesses for murder but not for fornication, and so on. Āmidī's reply: when the Legislator treats similar things differently, this is because the respect in which they are similar is not sufficient to warrant any other treatment or because some consideration stands in the way of his treating them as similar. When he treats dissimilar things similarly, this is because there is, despite the dissimilarity, some linking feature that unites the two things.

2. The use of analogy results in differences of opinion, since two mujtahids, working with analogies, may get different results; and to allow differences of opinion is to contradict certain verses from the Qur'ān and certain sayings of 'Alī and other Companions of the Prophet to the effect that differences of opinion are not allowable in religious matters. Āmidī attributes this argument to the Shī'īs. His reply: variation in law is not forbidden entirely, for God has revealed different legal orders (*sharā'i*), that is to say, legal orders that differ from each other in certain respects. Furthermore, the Muslim community is protected from error in its unanimous judgments; if differences of opinion were forbidden the community, which agrees that they are not forbidden, would be guilty of error. Therefore, the verses and sayings that the Shī'īs quote must be understood to pertain to differences of opinion concerning basic matters of the faith, such as the unity of God, or to differences that arise after an Ijmā'ic consensus has been reached, or to differences among commoners who are not qualified to engage in scholarly investigations.

3. If two mujtahids disagree as to what analogy calls for in a given case, then either both are right, which is impossible since it means that a thing and its opposite are both true, or one only is right, which also is impossible

since one has no more reason to say that one mujtahid is right than to say that the other is right. Āmidī's reply: both mujtahids are right, for a thing and its opposite may both be true *relative to different persons or situations* (*bi'l-nisba ila shakhsayn mukhtalifayn aw halatayn mukhtalifatayn*). In God's eyes, whatever rule a mujtahid is led to by his scholarly endeavors is right and true for that mujtahid.

4. The notion that a rule can be established on the basis of an analogy when the Prophet was capable of making a declaration that would have been much more explicit is inconsistent with the belief in the supreme eloquence and wisdom of the Prophet and contradicts his saying, "Great volumes of words came to me, but wisdom was condensed for me." Āmidī's reply: if a departure from the most explicit forms of speech was inconsistent with eloquence, then the Qur'ān would not contain ambiguous expressions whose intended meanings are quite definite or general expressions whose intended meanings are quite specific or unqualified expressions whose intended meanings are qualified or expressions that are capable of sustaining either literal or nonliteral meanings. Moreover, it is rationally possible that God and his Apostle considered analogical reasoning and scholarly endeavor to be beneficial to man in that they constitute striving for the sake of a reward.

5. The original rule in an analogy is operative either by virtue of an authoritative text or by virtue of an occasioning factor. If it is operative by virtue of an authoritative text, then the derived rule must also be operative by virtue of the text, or it is not a true derivative. The original rule cannot be operative by virtue of an occasioning factor, since an occasioning factor is merely probable and the original rule would therefore itself be probable, when in fact it must be certain. Āmidī's reply: it is true that the original rule is operative by virtue of a text. However, it is not a condition of the derived rule that it be operative by virtue of the same thing as the original rule. In fact, the original rule is operative by virtue of a text, and the derived rule is operative by virtue of an occasioning factor that is itself extrapolated from the original (i.e., text-based) rule.

6. If it is possible in rational terms for an analogy predicated upon a supposed beneficial objective of the Legislator to be the indicator of a rule governing a novel case, it follows that it is possible in rational terms for the analogy to be the indicator of a rule governing any case whatsoever, including the principal case in an analogy, since a beneficial objective is always to be supposed. But this conclusion is in reality impossible, since if all rules may be based on analogy an infinite regression results. Āmidī's reply: the infinite regression is, in fact, the reason why the conclusion indicated does not follow from the premise.

7. An *‘illa* (here translated as “occasioning factor”) is really the cause of a rule, the thing that necessitates the rule. But the things that are taken to be the *‘illas* of rules of divine law are not truly their causes, since God is not subject to causation. Āmidī’s reply: it has already been pointed out that *‘illa* has the sense, not of “cause,” but of “occasioning factor” (or, in the view of a minority of jurists, of “sign”).

8. A divine rule is in reality a divine statement, and divine statements come to us only through God’s revealing them to us. They cannot come to us through analogy, since the use of analogy is a human activity: human beings cannot make known to themselves God’s statements. Āmidī’s reply: if indeed the rules that emerge from the use of analogy are not divine statements in the strict sense, they nonetheless have authority by virtue of divine statements to that effect. If no such statements are to be found in the Qur’ān or Sunna, then the Ijmā’ constitutes a sufficient witness to them.

Once a Muslim jurist has become convinced that it is possible in rational terms for an analogy to be indicative of the divine law, he must then face the issue of whether the indicator-status of analogies has the requisite textual basis.⁷ The mere possibility that an analogy is an indicator of the divine law is not in itself sufficient justification for the actual use of analogy in the formulation of the law. For this a textual warrant is necessary. On the other hand, if the possibility can be denied on purely rational grounds—that is to say, on the grounds either of logical self-contradiction or of contradiction of some accepted truth—then there is presumably no point in looking for a textual warrant, since such a warrant can be presumed not to exist. The opponents of analogy thus have two possible strategies: to show analogy to be without probative strength on purely rational grounds (the approach of the Shī’īs, according to Āmidī) or to show it to be without a textual warrant (the approach of the Zāhirīs).

It is useful at this point to remind ourselves of the hierarchy of indicators of the divine law and the place of analogy within that hierarchy. Since analogy is at the bottom of the hierarchy, its indicator-status may be established by any other indicator. The indicator-status of the Ijmā’, by contrast, may be established only by the Qur’ān or Sunna, and that of the Sunna may be established only by the Qur’ān. The Qur’ān alone, by virtue of its miraculous character, establishes its own indicator-status, thus acquiring its position at the top of the hierarchy.

Āmidī identifies four jurists as holding that the use of analogy was without textual justification and therefore forbidden: Dāwūd ibn ‘Alī al-Isfahānī (founder of the Zāhirī school), his son, Qāshānī, and Nahrawānī. These jurists did, he notes, make an exception of analogies based

upon rules whose occasioning factors were indicated in the texts, either by way of explicit statement or by way of implication. One wonders if he would not have regarded them as also making an exception of analogies involving occasioning factors attested to by an Ijmā'ic consensus. At any rate, these jurists, as depicted in Āmidī's account, clearly ruled out analogies involving occasioning factors that were ascertained through any one of the last four methods of ascertainment discussed in the previous chapter. Āmidī does not mention the Zāhirī school as such, although presumably all members of this school adopted the antianalogy attitude of its founder.

All other jurists, says Āmidī, considered the indicator-status of analogies to be textually grounded. However, they differed as to whether the relevant texts were productive of certainty or only of probability. Āmidī joins company with Abu'l-Husayn al-Basrī in affirming, against all others, that they are productive only of probability. It is striking that Āmidī regards the vast majority of jurists up to his time as having maintained a posture of confident dogmatism on this issue. This dogmatism, together with that of the opponents of analogy, bears testimony to the intensity of the conflict—or, more truly, the battle—carried on between the two parties to the debate. Āmidī's own willingness to adopt a nondogmatic posture is no doubt to be seen as informed by his steadfast conviction that probability is a sufficient guide in matters of law.

Āmidī first reviews and critiques a long series of "weak" arguments for the use of analogy before turning to the arguments he regards as having probative strength. In the interests of economy of space, I shall not deal with his discussion of the weak arguments here. The valid arguments he expounds and defends fall under three headings: arguments from the Qur'ān, arguments from the Sunna, and arguments from the Ijmā'. Of these, he regards the third category as the strongest. The fact that the arguments from the Ijmā' yield probability, not certainty, lends confirmation to my contention, stated in an earlier chapter, that Āmidī considers the Ijmā' to be a probability-engendering indicator (*dalīl zannī*), not a certainty-engendering indicator.⁸

The argument from the Qur'ān focuses upon a single Qur'ānic statement: *fa-ṭabirū yā ūlā'l-absār* (59:2). Most translations favor an interpretation of the key word *ṭabirū*, (e.g., "learn a lesson," "take heed") that does not well serve the argument here advanced. For that reason, it is necessary to discuss the Arabic word itself. Its real meaning, according to the argument, is "Transfer from one thing to another!" This meaning obtains in analogical reasoning, since a legal category (obligatory, forbidden, valid, etc.) is transferred from a principal case to a novel case. Furthermore, this meaning constitutes the literal sense of the word. Therefore, we may say, on the basis of this Qur'ānic

passage, that analogical reasoning is commanded by God. Whether the command places analogical reasoning in the category of the obligatory or in the category of the recommended is, of course, a matter for further interpretation. The point of the argument is that, be it obligatory or recommended, the use of analogy in the formulation of the law is called for (*matlūb*).

Āmidī now turns to the objections to this argument and to counterarguments, which both together add up to seven.

1. The imperative form of the verb (the *ifʿal* form) does not signify a command. Āmidī's reply: it does, as explained earlier, signify a calling for an act (*talab al-fiʿl*) such as is common to both an imposition of obligation and a recommendation.

2. *Iʿtabirū* means "take heed," not "transfer from one thing to another." This is proven by two things: first, the use of the cognate word *ʿibra* in Qurʾān 3:13 and 16:66 in the sense of "warning"; second, if someone who made use of analogy in formulating the law was disobedient and heedless of the hereafter, we would say that he is not *muʿtabir*, not that he is *muʿtabir*—but if *muʿtabir* meant "transferring from one thing to another," we could not say this. Āmidī's reply: if the verb *iʿtabara* (from which the imperative is derived) meant "to take heed," it would not be possible to say *iʿtabara fulānun fa-ttaʿaza* (*ittaʿaza* meaning "to take heed"). Moreover, there is an element of transference (i.e., analogical reasoning) in taking heed: one who takes heed, or takes warning, from someone else (that is, from someone else's experience) transfers what he knows about that other person to himself. As for the use of the expression "not *muʿtabir*," mentioned in the second part of the argument, this is, in this instance, an instance of *majāz*. What one is saying is that the person in question has forfeited one of the great objectives of the law—his eternal salvation—not that he has not made use of analogy.

3. Granted, the literal meaning of *iʿtabirū* is "Transfer from one thing to another! [that is, Make use of analogy!]" ; however, the context of this Qurʾānic expression shows that it has been diverted from its literal meaning to the meaning "Take heed!" (The context reads: "But God came upon them from whence they had not reckoned, and cast terror in their hearts so that they ruined their houses with their own hands and the hands of the believers. *Fa-ʿtabirū*.") Āmidī's reply: we have just shown that even the meaning "Take heed!" embraces the idea of transference, of use of analogy.

4. Even if we admit that the intended meaning of *iʿtabirū* is "Make use of analogy!" we still have no reason to assume that the Qurʾān is referring to analogies of all sorts. For *iʿtabirū* could very well have a qualified or restricted reference; it could, for example, be referring exclusively to analogy involving a rule-occasioning factor expressly mentioned or alluded to in the texts.

Āmidī's reply: since a mujtahid who formulates a rule on the basis of a rule-occasioning factor stated or alluded to in the texts is really basing the rule upon the texts and not in any significant way upon an analogy as such, as pointed out earlier, this Qur'ānic passage is much more likely to be referring to analogy in which the occasioning factor is not expressly mentioned or alluded to in the texts.

5. Even if we admit that this is so, it can still be argued that the Qur'ānic verse under consideration is addressed to those living at the time of its revelation; it does not contain any general expression by virtue of which it would pertain to later generations. Āmidī's reply: we do not agree that one must assume that only those living at the time of revelation are included in the import of the verse. However, even if we admit that the verse does not contain any general expression by virtue of which it would pertain to later generations, it must still be regarded as pertaining to later generations because of the Ijmā'ic consensus that affirms that rules of law addressed to contemporaries of the Prophet have a general relevance that is inclusive of later generations. However, even if we admit that the verse pertains only to contemporaries of the Prophet, a point still has been proven—that the use of analogy is commanded by God; and once this point is accepted, there are no grounds for separating later generations from contemporaries of the Prophet.

6. Even if we admit that the verse pertains to all generations, the command is still unqualified in that there is no indication whether it is to be obeyed immediately on a one-time basis or repeatedly. Āmidī's reply: we have previously demonstrated that a command is to be obeyed repeatedly unless there is something in the context that indicates that it is to be obeyed on a one-time basis only.

7. Even if we admit that the command is to be obeyed both immediately and repeatedly, this is still indicated in a manner that gives rise only to opinion, not to certainty; and the present issue is one that must be resolved with certainty. Āmidī's reply: to the contrary, the present problem is one that may be resolved through opinion.

Āmidī's argument from the Sunna employs five Sunnaic passages containing sayings of the Prophet.

1. The Prophet said to Ma'ādh when he sent him as judge to the Yemen, "By what will you judge?" He said, "By the Book of God." The Prophet then said, "And if you do not find what you need in the Book of God, what then?" Ma'ādh said, "I shall decide on the basis of the Sunna of the Apostle of God." Said the Prophet: "And if you do not find what you need in the Sunna?" "Then," said Ma'ādh, "I shall exercise discretion." And the Prophet confirmed him in this. The discretion referred to in this story would have been discretion

based on the authoritative texts, since otherwise it would have been detached from a proper basis, and any discretion thus detached is not to have any role in the formulation of the law.

The appeal to this story is, as might be expected, not without problems, to which the opposition readily calls attention. First of all, the story cannot be traced all the way back to a Companion of the Prophet, and it furthermore belongs to the class of “reports of individuals” such that it does not yield certainty about its authenticity. Second, since the Prophet appointed Ma‘ādh as judge, he must have known how Ma‘ādh would proceed in making judicial decisions; therefore the questions attributed to the Prophet in this story are inappropriate, which renders the story suspect. Third, the story makes the exercise of discretion dependent on not finding a suitable Qur’ānic or Sunnaic text; but this contradicts Qur’ān 6:38: “We have neglected nothing in the Book.” To these points Āmidī responds as follows. Information about the Prophet that is not traced to a Companion and that belongs to the category of “reports of individuals” carries probative weight in situations calling for guidance where material of greater weight is lacking. The questions attributed to the Prophet may be considered appropriate when considered as a way of reinforcing points previously communicated to Ma‘ādh or of demonstrating to others that Ma‘ādh was qualified to be a judge. As for Qur’ān 6:38, it does not mean that the Qur’ān is the indicator of all things, since we know that there is much in the way of information about the world and even in the way of rules of law that it does not include.

But even if we admit that the story is authentic, can it not be argued that “exercise of discretion” can just as well refer to the handling of ambiguous passages in the texts as to the use of analogy to establish rules that lie beyond the texts? No, says Āmidī, for the handling of ambiguous passages is included in the phrase “and if you do not find what you need...” That is to say, the story makes it clear that Ma‘ādh turns to the exercise of discretion after he has already done all that he is able to do with the textual material, including the ambiguous material.

The opposing line of argumentation continues: even if we admit that the phrase “exercise of discretion” refers to the use of analogy, the analogy to be employed could still very well be that which entails a rule-occasioning factor mentioned or alluded to in a text. Āmidī considers this unlikely for reasons he has already given. But then, even if we admit that the “exercise of discretion” refers to the use of analogies of all kinds, how do we square the use of analogy with Qur’ān 5:3: “This day have I perfected your religion for you.” How can the use of analogy be justified after the perfection of religion has already taken place? Āmidī suggests in reply that the perfection of religion means that

the understanding of all things thereafter becomes possible, whether directly from the texts or indirectly by way of analogy. The use of analogy is thus part of the new situation brought about by the perfecting of religion. Finally, the opposition argues that the whole line of argument developed up to this point, even if admitted to have some validity, leads only to probability, not to certainty; the issue at hand is one that requires a resolution that leaves no doubt whatsoever. Āmidī again expresses a contrary assessment of the issue: it is one that admits of resolution on the basis of probability.

Āmidī notes that many of the points raised in the discussion of the story of Ma'ādh pertain to the following Sunnaic passages as well. In order not to repeat himself, in dealing with these passages, he confines his attention to points unique to them.

2. A girl came to the Prophet, saying, "My father is not able to go on pilgrimage. If I go on pilgrimage in his stead, will that suffice?" The Prophet said, "If your father has a debt and you pay it for him, do you think that will suffice?" She said, "Yes." He said, "The debt to God is even more worthy to be paid by you." The point made by citing this story is that the Prophet was showing that the girl's question could be answered through a resort to analogy. Here is a case where something known to be true with regard to the payment of a debt is transferred to the discharge of a religious duty. But can we not argue that the Prophet mentioned human debt for the sole purpose of making his point understandable to the girl, that he was not intending to endorse the use of analogy in the formulation of the law? Āmidī replies that if the Prophet's saying to the girl did not entail an endorsement of the use of analogy, then it would have made no sense for him to mention human debt. The Prophet, in other words, would have been wasting words, thus casting doubt upon his known eloquence; for if the Prophet's intention was nothing more than to convey an answer to the girl's question, he could simply have said, "Yes." The girl would have understood perfectly well.

3. Umm Salama asked the Prophet whether it was permissible to kiss while fasting. The Prophet said, "Has it been reported that I kissed while fasting?" This rhetorical question implies that whatever pertains to the Prophet pertains by analogy to other Muslims as well. Thus the Prophet implicitly endorsed the use of analogy. But can it not be argued that this story only shows that the Prophet's example carries authority for Muslims and should be followed, and nothing more? Āmidī contends that emulation of the Prophet entails a sort of analogy: what is true with respect to the Prophet's doing a thing is transferred to the doing of that same thing by other Muslims.

4. The Prophet commanded Sa'd ibn Ma'ādh to exercise his discretion in rendering a decision respecting the Banū Qurayza and to order them to

submit to his judgment. When Saʿd ordered that they be killed and their women be taken captive, the Prophet said, “His judgment concurs with the judgment of God.” Here again the reference to the use of discretion carries the implications mentioned in connection with the story of Maʿādh. If Saʿd’s decision was to be based on a text, the Prophet would not have commanded him to exercise his discretion.

5. The Prophet said, “I made fats unlawful for them [the Jews], and yet they produced them and sold them and devoured their prices.” This statement makes it clear that the devouring of the money received from the sale of fats is unlawful on the analogy of the unlawfulness of eating fats. But does not the phrase “I made fats unlawful for them” include making unlawful the sale of fats? Āmidī argues that when an edible thing is forbidden, the literal sense of the ruling is that it is the eating of the thing that is forbidden. Any other prohibition must be demonstrated by way of analogy.

To the arguments related to the above-mentioned Sunnaic texts Āmidī adds an argument of a more general nature. There are a great many Sunnaic passages in which the Prophet indicates the occasioning factor behind a rule, thus intimating that wherever the occasioning factor is to be found an analogous rule becomes operative. Though each of these passages is of less than certain authenticity, the number of them is such as to leave no doubt in our minds that the Prophet did indeed sometimes specify the occasioning factor behind a rule. Āmidī admits that the force of this argument is rather limited. The mere mention of an occasioning factor does not constitute solid proof of the transferability of a legal categorization (obligatory, forbidden) contained in a rule to other cases in which the occasioning factor is to be found, as has already been noted. Furthermore, the passages in question have probative value only in regard to analogies in which the rule-occasioning factor is textually indicated.

Āmidī turns finally to the argument from the *Ijmāʿ*, the linchpin, in his view, in the case for analogy. As is generally true throughout the *Ihkām* when appeals are made to the *Ijmāʿ*, the *Ijmāʿ*ic texts to which Āmidī turns consist entirely of *Āthāric* material. Thus he begins his account of the argument with the general statement that the Companions of the Prophet agreed that in dealing with cases for which no text-based rule could be discovered resort should be made to the use of analogy. He immediately makes it clear that this consensus was tacit, a consensus evident from the apparent absence of protest on the part of any Companion to particular instances of the use of analogy by fellow-Companions. The fact that there are, in Āmidī’s view, innumerable instances of the use of analogy by Companions, of course, strengthens the argument in his estimation. A single instance would establish little,

since the authenticity of any one Āthāric passage is always problematic. However, the plethora of such instances within the Āthāric texts adds up to a very high degree of probability that a consensus of Companions did indeed exist. Absolute certainty about this, however, is not possible, given the problems connected with the appeal to the Ijmā' noted in an earlier chapter.

Āmidī gives the following examples of these instances. The Companions concurred with the decision of Abū Bakr to exact *zakāh*-tax by force from the Banū Hanifa on the analogy of the Prophet's doing the same with respect to other groups. Abū Bakr made the appointment of a successor to the caliphate covenantal on the analogy of his having been appointed caliph by an oath of allegiance. 'Umar wrote to Abū Mūsā al-Ash'arī, saying, "Know similarities and likenesses and then make analogies between things through the exercise of your discretion." He also said, "I have made my decision concerning the inheritance due to the grandfather on the basis of my own discretion." When someone told 'Umar that Samura had taken wine from Jewish merchants and had let it ferment and then sold it, he said, "May God be the enemy of Samura! Is it not known that the Prophet said, 'May God curse the Jews, for I made fats unlawful to them, yet they produced it, sold it, and devoured the profit?'" Thus 'Umar drew an analogy between wine and fats. 'Alī fixed the penalty for drinking wine as follows: "When he drinks he becomes drunk; when he is drunk he is irrational; when he is irrational he fabricates. Therefore his penalty is that of the fabricators." 'Alī advised 'Umar as follows when the latter expressed doubt as to the retaliation for a man killed by seven men: "If several men participated in a theft, would you cut off their hands?" 'Umar said, "Yes." 'Alī then said, "Deal similarly with this case." Thus he drew an analogy between killing and stealing. Zayd ibn Thābit was asked by Ibn 'Abbās whether he had found a text in the Qur'ān supporting his decision with respect to a particular problem of inheritance, and Zayd said, "I speak on the basis of discretion, as you speak on the basis of discretion." Ibn Mas'ūd advised those appointed to judgeships as follows: "There is no harm in judging on the basis of the Book, the Sunna, and the judgments of the pious; but if you do not find anything relevant in any of these things, then exercise discretion." The Companions differed with respect to the inheritance of the grandfather: some treated the grandfather on the analogy of the father, others on the analogy of the brother. In both cases, analogy was employed.

All these examples, says Āmidī, not to mention many more that could be cited, show that a number of Companions of the Prophet made use of analogies in the formulation of the divine law. Those who did not gave silent consent to those who did by not voicing objection to the procedure, and the probability of a tacit consensus in favor of the use of analogy that their silence

engenders is sufficient Ijmā'ic justification for the use of analogy in the formulation of the law. Where an "exercise of discretion" is mentioned without a specific mention of analogy, we may assume that this exercise of discretion entailed the use of analogy; for the exercise of discretion necessarily had to have some acceptable basis, and since there is no mention in these examples of a textual indicator of the rule we must conclude that the basis was an analogy. We are led to this conclusion by the fact that the order of things as constituted by the divine custom is such that in the context of disagreement over a rule of law any textual indicator that has a bearing upon the case will necessarily be mentioned.

Against this argument the opposition raises a number of counterarguments, to which Āmidī now turns.

1. None of the Companions really resorted to the use of analogy. In the examples given, what is involved is not the use of analogy but an effort to elucidate an obscure meaning of a text. This argument appears to have been one of the chief weapons in the arsenal of the antianalogy faction. It proceeds from the presumption of a textual basis for every rule expounded by a Companion of the Prophet, whether the identity of the relevant text be known to us or not. Thus, where a Companion of the Prophet appears to be basing a rule upon an analogy, the appearance is only that: in reality, the Companion has a textual basis that happens to be unknown to us, and the comparison with a rule whose textual basis is known to us has the sole function of elucidating the unknown textual basis. What the procedure amounts to, therefore, is an elucidation of an ambiguous text through reference to a clear, or at least less ambiguous, text. Āmidī's reply: if the Companion was indeed formulating the rule on the basis of a text and not on the basis of the analogy as such, the identity of the text would come down to us as part of the Companion's argument, for reasons that have been stated above.

2. One can argue that in discussions in which analogies are used the participants will necessarily mention the occasioning factor upon which an analogy is based; if no occasioning factor is mentioned, then one must assume that no analogy has been used and that the basis of argument is a text. Āmidī contends, in response to this argument, that as a matter of fact the Companions of the Prophet often did mention the occasioning factor and that where it was not expressly mentioned it was often intimated.

3. The exercise of discretion can involve other sorts of things than the use of analogy. We cannot therefore conclude from texts that speak of an exercise of discretion that a use of analogy is involved. Āmidī's reply: it has already been argued that the basis of the rulings mentioned in the examples could not have been a textual indicator of a rule. This being the case, and considering

that a ruling must have some acceptable basis, the basis must necessarily have been an analogy.

4. It is not true that none of the Companions of the Prophet objected to the use of analogy as carried on by others among them. There are many Āthāric texts that show that some did object. Āmidī's reply: the examples of objection to the use of analogy involve the same persons as the examples we have cited in support of the use of analogy. Some sort of accommodation must be made between the two sets of examples, since both cannot be accepted and one of the two cannot be accepted over the other without some sort of tipping of the scales. Therefore, the objection to the use of analogy in the examples given must be understood to be an objection to the use of analogy on the part of unqualified persons, or nonmujtahids, or to the use of analogy to produce results that are in conflict with textual givens or with well-established rules of law, or to the use of analogy without a text-based original rule, or to the use of analogy with respect to matters that require a certainty-based resolution.

5. Even if we admit that none of the Companions voiced objection to the use of analogy in the above-mentioned examples, their silence still does not necessarily indicate consent. This objection repeats points made earlier in the *Ihkām*, and Āmidī refers his reader back to the earlier section for his response. What is at issue here is, of course, the probative value of a supposed tacit consensus.

6. Even if we admit that silence indicates consent, any consensus that we may deduce from the silence still can never be more than a probable Ijmā'ic consensus, the basis for opinion only. Āmidī here again returns to his underlying principle that in the realm of law probability is sufficient.

7. It is at least possible that the analogies employed by the Companions of the Prophet were always based on an occasioning factor mentioned or alluded to in a text. Āmidī's reply: in that case, the relevant text would have been cited and this citation would have been transmitted to us, for reasons previously given.

8. Even if we admit that analogies were employed by the Companions of the Prophet, this does not mean that later generations, who are inferior in learning and other qualities to the Companions, may make use of analogies. This argument clearly reflects the thinking of those who regarded the consensus of the Companions only as authoritative, a position Āmidī has previously dealt with in the *Ihkām*.⁹ Āmidī's reply: either one accepts the use of analogy as permissible for all generations or one rejects it completely: on this the two main parties in the present controversy are agreed. One may not, in other words, make a separation between generations. On the other hand, even if it was true that the use of analogy is permissible for the Companions of the

Prophet only, a point has been scored against our main protagonists in this debate, who reject analogy completely.

The third of the analogy-related controversies recorded by Āmidī focuses on the issue of an occasioning factor expressly mentioned in a Qur'ānic or Sunnaic text.¹⁰ If a Qur'ānic or Sunnaic text was found that stated that the drinking of *khamr* is forbidden on account of its being intoxicating (*li-iskārihi*), could we say that the text *as such*, quite apart from any recourse to analogy, warrants our transferring the category of forbiddenness to a case not mentioned in the text in which the occasioning factor is present, namely, the case of *nabīdh*-drinking? Could we say, in other words, that a rule forbidding the drinking of *nabīdh* can be established without any indication that the Legislator has made it a duty for us to comply with the dictates of analogy, that the text itself is a sufficient indicator of the rule? Āmidī tells us that Abū Ishāq al-Isfarā'inī, Ja'far ibn Mubashshar, Ja'far ibn Harb, most Shāfi'īs, and some Zāhirīs answered this question in the negative, while Ahmad ibn Hanbal, Nazzām, Qāshānī, Nahrawānī, Abū Bakr al-Rāzī, Karkhī, and Abū 'Abd Allāh al-Basrī answered in the affirmative. (Āmidī notes that the last-named jurispudent regarded the text as sufficient only in cases where a legal duty, as opposed to a mere moral exhortation, was involved.)

Āmidī takes the side of those who reject this way of thinking, arguing as follows. Assuming that there is no duty to comply with the dictates of analogy, then if the Legislator said, "I forbid *khamr* on account of its being intoxicating" our basis for forbidding *nabīdh* would have to be one of two things: the generality of the language of the statement or the presence in the case of *nabīdh* of a textually specified occasioning factor behind the forbidding of *khamr*. Here Āmidī is clearly citing arguments of the opposing side. Some (including Nazzām) argued that a statement such as "I forbid *khamr* on account of its being intoxicating" (*harramtū 'l-khamra li-iskārihi*) is really tantamount, on linguistic grounds, to the statement "I forbid everything that intoxicates" (*harramtū kullā muskir*) and that since the latter statement includes the general expression "everything" the forbiddenness of *nabīdh* could therefore be said to be contained within the meaning of the text. Others, it seemed, argued that if a text specifies an occasioning factor behind a rule then the notion that the legal category contained in the rule (obligatory, forbidden, etc.) applies to all cases in which the occasioning factor is present must be considered part of the meaning of the text itself, such that one is not really depending upon analogy. Analogy, let us remember, takes us beyond what may be considered, on linguistic grounds, to be the intended meaning of the author/speaker. Both arguments thus claim that the forbidding of

nabīdh emerges from consideration of the import of the *language* of the text, nothing more.

But, argues Āmidī, “I forbid *khamr* on account of its being intoxicating” is not tantamount to “I forbid everything that intoxicates,” for if a master says of a certain slave, “I release Sālim on account of his being black,” we do not necessarily understand these words to indicate that the master intends to release every black slave that he may happen to possess, whereas if he says, “I release my black slaves,” we do understand this to be his intention. Thus in ordinary usage the former statement is not taken to be tantamount to the latter. Similarly, when a master says, “I release Sālim on account of his being black,” we do not understand the words to mean that the master intends to release another slave, Ghānim, in whom blackness is present. If the master releases Sālim but not Ghānim, we would not regard his action as contradicting his words. Furthermore, while it is possible that the statement “I forbid *khamr* on account of its being intoxicating” could have in mind intoxication in general, it is also possible that the speaker (God) has in mind a specific kind of intoxication peculiar to *khamr* that entails a unique kind of harm known to him, if not to the hearer. Since both possibilities are equal, one does not have adequate ground for a presumption in favor of one over the other.

Pursuing the point about the generality of the language employed in “I forbid *khamr* on account of its being intoxicating,” the opposing party persists in defending its point of view. Surely the statement “I release Sālim on account of his blackness” signifies that all black slaves are being released; for if Ghānim was not released, any rational person (with the backing of the great authorities on the *Lugha*) would object, saying, “But Ghānim, too, is black. Why, therefore, did you release Sālim alone?” Furthermore, if a master says, “I release Sālim on account of his blackness,” his words have, it is true, not made it explicit that he intends to release the other black slaves, and therefore the law, insisting on explicit meaning in such a transaction as against implied meaning, does not regard the words as effecting the release of the other black slaves. But this is not to say that his words could not, considered as something other than a legal formula, imply an intention to release other black slaves. In the case of the Legislator’s language, we are not dealing with such legal formulae and we are therefore not bound solely to explicit meaning.

Āmidī’s reply: the reason why the rational person objects to the master’s not releasing Ghānim is not that the language of the master’s words is inclusive of Ghānim but that the rational person objects to the behavior of the master as such—releasing Sālim on account of his blackness while not releasing another black slave. What is objectionable, therefore, is not the master’s contradicting the import of his words through his behavior but the unfairness

of the behavior itself. Furthermore, the reason why the law does not regard the words “I release Sālim because of his blackness” as effecting the release of Ghānim is precisely that the words are specific, not general: they mention Sālim by name but do not mention Ghānim.

The opposition now turns to the point about the specificity of the intoxication that occasions the forbidding of *khamr*. Against this point, it is argued, a number of reasons can be given why the occasioning factor must be general. I shall here mention three of these.

1. Ordinary usage provides evidence that if a father says to his son, “Do not eat this on account of its being poisonous,” it is to be understood that the eating of everything poisonous is forbidden by the father. This general import of the father’s words comes immediately to the mind of anyone who hears them. This is, therefore, ground in common usage for making a presumption of generality over a presumption of specificity. The two possibilities are not equal. Āmidī’s reply: we judge the import of the father’s words to be general because of circumstantial (that is to say, contextual) evidence relating to the behavior of fathers toward sons: fathers are consistently eager to safeguard the life and health of their sons. Therefore, the general import cannot be said to be what would first come to the mind of a hearer of the father’s words apart from any consideration of circumstantial factors. In the case of words such as “I forbid *khamr* on account of its being intoxicating,” we have an entirely different situation. We cannot infer from the Legislator’s ways a pattern of behavior like that we infer from the ways of fathers. Just as the Legislator enjoins fasting during the daytime of Ramadān but forbids it during the feast that ends the fast, or forbids the drinking of *khamr* in one age while permitting it in another, or enjoins fasting upon the menstruating woman but not the *salāh*-prayer, or permits looking at the face of a beautiful slave-girl but not at the face of an unattractive free woman, so there is no reason to assume from the words “I forbid *khamr* on account of its being intoxicating” that he may not (if he so wills) permit the drinking of some other intoxicating beverage. To those who insist that God necessarily takes the well-being of his creatures into account in establishing rules of law Āmidī replies that the well-being of his creatures itself varies with circumstances from age to age.

2. It is generally the case that an occasioning factor mentioned in a text has some sort of suitability in relation to the rule it occasions. But if one restricts the intoxication that occasions the rule forbidding *khamr* to a type of intoxication that is unique to *khamr*, one cannot really describe this intoxication as having this suitability. Āmidī’s reply: the notion of suitability underlying this argument presupposes that one can only meaningfully speak of the suitability of something that *khamr* and other beverages share as a common feature. But

this way of thinking about suitability is exactly what underlies the use of analogy as an indicator of the law, the very thing that the opposing party denies. If one dispenses with the use of analogy altogether and insists that the mention of intoxication in the text is sufficient to make intoxication the occasioning factor behind the forbidding of *khamr*, then there is no reason to bring suitability into consideration at all.

3. If the intoxication mentioned in "I forbid *khamr* on account of its being intoxicating" is a type of intoxication that is unique to *khamr*, then there is no point in mentioning it, and to attribute such statements to the Legislator is to attribute superfluity to him. Therefore, in order to safeguard the speech of the Legislator against superfluity, we must suppose the intoxication mentioned in the statement to be intoxication in general, shared with all intoxicating beverages. Āmidī's reply: the intoxication need not be general in order for the mention of it to make sense, since the mention of intoxication in connection with *khamr*—even if it be a type of intoxication unique to *khamr*—helps the addressee more readily to accept the rule forbidding *khamr* and to obey it. Furthermore, the mention of the occasioning factor enables the addressee to identify cases in which a rule is not operative.

The three remaining controversies are confined to the circle of jurists who accept analogy as an indicator of the law. As I suggested earlier in this chapter, they dwell on issues relating to how far the use of analogy should be carried. Āmidī devotes a rather small number of pages to these controversies, and my treatment of them will therefore be brief.

The issue in the fourth controversy is whether recourse to analogy may be carried into the sphere of prescribed penalties (*hudūd*) and expiations (*kaffārāt*).¹¹ Āmidī has his own school—the Shāfi'ī—and the Hanbali school taking the position that analogy may indeed be operative as an indicator in this sphere, with the Hanafī school adopting the opposing point of view. Āmidī adheres to the position of his school, arguing that 'Alī's use of analogy as an indicator of the prescribed penalty for drinking *khamr* received the sanction of the Ijmā' inasmuch as no other Companion of the Prophet voiced disapproval.¹² Furthermore, a Sunnaic passage commonly used to defend the use of analogy, the story of Ma'ādh,¹³ makes it clear through its employment of general expressions ("I shall exercise discretion") that there is no limit on the use of analogy. The permissibility of recourse to analogy in the sphere of prescribed penalties and expiations is thus preponderant over its being forbidden—and preponderance or probability is, as Āmidī so often points out in the *Ihkām*, an adequate basis for the formulation of the law. He quotes, in this connection, the Prophet's saying, "We make judgments on the basis of what is apparent, and God takes charge of the hidden things."

The issue in the fifth controversy is whether an occasioning factor behind a rule may itself be established on the basis of an analogy.¹⁴ Āmidī mentions the case of sodomy for illustrative purposes. May sodomy be taken as occasioning the application of the penalty of a hundred lashes on the ground that it is analogous to fornication (*zinā*, a term limited to normal coitus between unmarried partners)? If it is so taken, there must then be some sort of link between sodomy and fornication that warrants the analogy. Can this link not be penetration of a carnally appealing but forbidden orifice? On this issue, the majority of Shāfi'īs, according to Āmidī, take an affirmative position, with the Hanafīs taking a negative position. For reasons similar to those given above, Āmidī (joining his fellow Shāfi'ī schoolmen) is of the opinion that no such restriction as proposed by the Hanafīs should be placed upon the use of analogy.

Finally, the sixth and last controversy takes up the issue of whether it may be said that *all* rules of law are established on the basis of analogy.¹⁵ Strangely, a trifling number (*ba'd al-shudhūdh*) of unnamed jurists, according to Āmidī, took the view that all rules were indeed so established, with the vast majority insisting that, however important analogy might be as an indicator of the law, it could hardly be regarded as the basis of the entire corpus. Our study thus far has shown that the jurisprudence reflected in the pages of the *Ihkām* gives at least as much importance to texts as indicators in their own right as to analogy. We do not have any indication from Āmidī as to which category of indicators—texts or analogy—engendered the greater volume of rules. Probably the medieval jurists in general found it difficult to make a judgment on this question.

Before we proceed to the next chapter, some notice should be given to the following section of the *Ihkām*. It is this section that constitutes the fifth and last main part of Āmidī's overall discussion of analogy. As noted at the beginning of chapter nine, this part deals with the dialectics of the use of analogy. When a mujtahid formulated a rule of law on the basis of an analogy, he was expected to anticipate all the possible objections or criticisms (*ītirādāt*) that might be leveled against his use of the particular analogy by fellow mujtahids. This required that he be aware of any flaws in his argument that might make it vulnerable to criticism so that he could correct them and thus fare better in the dialectic. It is important to understand that this dialectic presupposed acceptance of the probative value of analogy—its status as an indicator of the law—by all parties. The dialectic is thus a kind of crucible through which any use of analogy must pass in order to acquire viability.

Āmidī's account covers a total of twenty-five objections that might be leveled against a particular use of analogy. These follow a definite logical—and

therefore, for debating purposes, chronological—order (*tartīb*), beginning with fundamentals and moving to subsidiary matters. The thoroughness of the dialectic is remarkable. Not a stone was to be left unturned. While all attempts to formulate the law, whether on the basis of texts or on the basis of analogy, were subject to the crucible of debate, it is clear that the Muslim jurists had a special preoccupation with problems arising from the use of analogy; for that reason the methodology of Muslim jurisprudential dialectic reaches its highest point of complexity and intricacy in connection with these problems.

I shall not deal with Āmidī's account of the methodology of dialectics in this study. In addition to not wishing to lengthen this volume beyond its already considerable size, I feel justified in this omission by two considerations. First, the medieval Muslims to a large degree pursued the study of the methodology of dialectics independently of the study of the actual dialectics, that is to say, the study of controversies over substantive issues in theoretical jurisprudence. I have in chapter 1 in Part I already referred to the pioneering work of Larry Benjamin Miller on the literature of a special discipline known as "the science of the proprieties of inquiry" (*'ilm ādāb al-baḥth*) or "the science of dialectic" (*'ilm al-jadal*). It is significant that Āmidī himself is credited with a separate work in this discipline, preserved, to my knowledge, in one Maghribī manuscript in Paris.⁶ Although this work is not identical with the section in the *Ihkām* on the methodology of dialectic, it gives the impression that this section belonged to a separate genre of literature and was a kind of insertion into the *Ihkām*. I think it is reasonable to regard our study as a study of substantive jurisprudence and to treat the methodology of Muslim dialectics as the subject matter for separate research along the lines of Miller's work. In the second place, omission of this section creates no serious lacuna in our study of substantive jurisprudence. Of the twenty-five objections recorded by Āmidī that may be leveled against a particular use of analogy, most entail topics we have dealt with in previous chapters, particularly the conditions of validity of an analogy and the methods of determining the occasioning factor.

ISTIDLĀL AND THE INVALID INDICATORS

The term *istidlāl*, Āmidī tells us, has two different senses in the parlance of the jurists. Sometimes it means nothing more than the mention of an indicator of the law, “mention” (*dhikr*) here meaning, quite obviously, the utilization of an indicator to justify a particular formulation of the law. It does not matter whether the indicator be a Qur’ānic or Sunnaic text, the *Ijmāʿ*, an analogy, or some other kind of indicator: the mention of any one of these constitutes *istidlāl*. But the term is also sometimes used by jurists to designate any indicator that does not fall under the familiar headings of Qur’ān, Sunna, *Ijmāʿ*, and analogy. It thus becomes, in this usage, a catch-all, a residual category. In practice, the term could provide a convenient pigeon-hole in which to place any indicator other than the widely accepted four that a jurist regarded as having probative value in the process of formulating the law. Just what might be actually included under the heading of *istidlāl* could—and did—therefore vary from jurist to jurist.

For Āmidī the category of *istidlāl* principally embraces two items: the syllogism and a principle that the jurists termed *istishāb*. Of the twenty-five pages of the *Ihkām* (1914 Cairo edition) devoted to *istidlāl*, nine are devoted to the syllogism and fourteen to *istishāb*. These pages bring to an end the longer subdivision of the second of the four major divisions of the *Ihkām*, the second *qāʿida*. This subdivision—the first *qism*, to use Āmidī’s jargon—has covered, as will be recalled, topics and issues having to do with the valid indicators of the law. The second *qism*, which is only thirty pages long and therefore not long enough to warrant an entire chapter in this book, covers those types of indicators that, as Āmidī puts it, “are thought [by some] to be valid but are not so.” These include scriptures that came through earlier prophets, the doctrine (*madhhab*) of individual Companions of the Prophet, the principle known as *istihsān*, and the so-called *al-masālih al-mursala*. (These terms will be explained in the proper place.)

The Syllogism

The section on the syllogism stands out from the rest of the *Ihkām* as unique.¹ It is totally devoid of the dialectic flavor that characterizes Muslim jurisprudential literature as a whole. Rather, it consists of a matter-of-fact introduction to the basic types of syllogisms. Wael Hallaq has noted that when authors of jurisprudential works—the notable case being Ghazālī—first began to include formal logic among their topics they dealt with it within the introductory section.² The section on formal logic in Ghazālī's *Mustasfā* in fact constitutes one of the best concise introductions to the subject in medieval Arabic literature. The inclusion of formal logic in a later chapter on *istidlāl* was thus a later practice, one that reflects a wish to treat formal logic, not as a prolegomenon, but as an indicator of the law in its own right and as an integral part of the jurisprudential enterprise.

Formal logic was a latecomer to Islamic theoretical jurisprudence, having become possible only after the contents of Aristotle's *Organon* had had time, in the wake of the translation of Greek philosophical texts into Arabic, to percolate into jurisprudential circles, a process that seems to have taken a century and a half or more. Ghazālī is well known for his role in according acceptability to and popularizing formal logic. Not all jurisprudential authors, however, included introductions to the subject within their works. It appears that jurists either accepted formal logic *in toto* as pertinent to theoretical jurisprudence or rejected or simply ignored it. There was nothing in it that called for debate. Even the very relevance of formal logic to jurisprudence seems never to have been a topic for debate in the usual style of jurisprudential dialectic.

One gets the distinct impression that formal logic was but a later appendage to Islamic theoretical jurisprudence (*usūl al-fiqh*), an insertion into *written* works (authored mainly by jurists representing the speculative-theological tradition),³ not an integral part of the live dialectic within which the fundamental principles of theoretical jurisprudence had been forged since days long before formal logic came into the picture. By the time formal logic found a place for itself under the heading of *istidlāl*, the theoretical jurisprudence of Islam was clearly too well formed, too mature, for that logic to have a profound impact on actual dialectic.

Nonetheless, those authors who did include formal logic within the purview of theoretical jurisprudence were careful to demonstrate to the best of their ability the relevance of formal logic to the jurisprudential enterprise. This they did, on the one hand, by giving the science of theoretical jurisprudence (*ilm usūl al-fiqh*) the logical structure required of an organized science in the Aristotelian tradition, showing its rootedness in premises, or

postulates, drawn from other sciences within a coherent system of sciences. This aspect of their effort was explored in the introduction of this book and in the chapters on the postulates of theoretical jurisprudence. In the section of their writings devoted to formal logic as an instrument to be used in the formulation of the law, they demonstrated the relevance of formal logic mainly through the examples they chose to illustrate the various types of syllogism. Earlier in the *Ihkām* Āmidī has in fact, in his discussion of the “rational indicator” (*dalīl ‘aqlī*), given the following example:⁴ all intoxicants are forbidden; *nabīdh* is an intoxicant; therefore, *nabīdh* is forbidden. Āmidī validates the major premise (all intoxicants are forbidden) by attributing it to the Prophet as a direct saying (one he would, no doubt, regard as having weak credentials, since a strongly attested saying of this kind would have rendered superfluous the common derivation of the forbiddenness of *nabīdh* by way of analogy from the forbiddenness of *khamr*). Since *nabīdh* is an intoxicant, it falls within the terms of the general rule.

It should be noted that what the foregoing syllogism does is to derive from a rule that has a very broad application a rule whose application is more specific. The statement “all intoxicants are forbidden” certainly has the character of a rule of law as defined in Islamic jurisprudence: it applies the category “forbidden” in a general way to a particular type of beverage (or, as most Muslim jurists would insist, to the drinking of this type of beverage).⁵ The syllogism thus shows that the rule “*nabīdh* is forbidden” is implicit within the more general rule that constitutes the major premise. The use of the syllogism to produce rules from rules presupposes that the law is internally consistent, a logically coherent whole, a system. If one has rules pertaining to classes of objects or acts, one can have, through the syllogism, rules pertaining to subclasses. The minor premise simply establishes that a given class of objects or acts is a subclass of some larger class.

In Western thinking about the role of formal logic in law, it is sometimes contended that the categorical syllogism underlies every application of a general rule to a specific case. Āmidī’s syllogism is concerned with no such thing. He does not argue, for example, all *nabīdh* is forbidden; what so-and-so drank is *nabīdh*; therefore, what so-and-so drank is forbidden. (A better example might be: all who drink *nabīdh* deserve flogging; Zayd drank *nabīdh*; therefore, Zayd deserves flogging.) Such a syllogism is on the order of the classical syllogism in which the conclusion is an affirmation about a particular: all men are rational; Socrates is a man; therefore, Socrates is rational. Islamic theoretical jurisprudence is, of course, much concerned with the subsumption of a particular case under a general rule; this is the real burden of the long debates over the general expression that we considered in chapter 8 in

Part II. However, those jurists who sought to bring formal logic into theoretical jurisprudence simply did not relate the syllogism to this matter.

It is perhaps significant that of the various examples Āmidī gives for the several types of syllogism it is only his examples of the categorical, or conjunctive (*iqtirānī*), syllogism that reflect truly legal interests. When he turns to the hypothetical and the disjunctive syllogisms, his examples cease to have a legal flavor. For example: if this thing is a man, then it is always an animal; it is a man; therefore, it is an animal. And a body is always either mineral or animal; this body is mineral; therefore, it is not animal. One wonders if these syllogisms were perceived to have less legal relevance than the categorical syllogism.

This latter type of syllogism, Āmidī explains, must have no less and no more than two premises. Each premise embraces two simple terms, one of which, the middle term, occurs in both premises. The two remaining terms become the constituent terms of the conclusion: one, called the major term, becomes the predicate of the conclusion; the other, called the minor term, becomes the subject of the conclusion. The premise containing the major term is called the major premise and that containing the minor term is called the minor premise. Every categorical syllogism must conform to one of three figures (*ashkāl*), and each figure must in turn assume one of several possible moods (*durūb*). The figures are distinguished from one another as follows: in the first figure the middle term is predicate in relation to the minor term and subject in relation to the major term; in the second figure the middle term is predicate in relation to both the minor and major terms; in the third figure the middle term is subject in relation to both the minor and major terms; and in the fourth figure the middle term is subject in relation to the minor term and predicate in relation to the major term.

Āmidī illustrates the three figures in their various moods as follows:

1. *First figure, first mood*: All acts of worship require (for their validity) intent; all performances of the minor ablution (*wudū'*) are acts of worship; therefore, all performances of the minor ablution require intent (similar to the example given above).
2. *First figure, second mood*: No act of worship is valid without intent; all performances of the minor ablution are acts of worship; therefore, no performance of the minor ablution is valid without intent.
3. *First figure, third mood*: All acts of worship require intent; some performances of the minor ablution are acts of worship; therefore, some performances of the minor ablution require intent.

4. *First figure, fourth mood*: No act of worship is valid without intent; some performances of the minor ablution are acts of worship; therefore, some performances of the minor ablution are invalid without intent.
5. *Second figure, first mood*: No valid sale is a sale of a thing whose qualities are unknown; all sales of unseen things are sales of things whose qualities are unknown; therefore, no valid sale is a sale of an unseen thing.
6. *Second figure, second mood*: All valid sales are sales of things whose qualities are known; no sale of an unseen thing is a sale of something whose qualities are known; therefore, no sale of an unseen thing is valid.
7. *Second figure, third mood*: No valid sale is a sale of a thing whose qualities are unknown; some sales of unseen things are sales of things whose qualities are unknown; therefore, some sales of unseen things are not valid.
8. *Second figure, fourth mood*: All valid sales are sales of things whose qualities are known; some sales of unseen things are sales of things whose qualities are unknown; therefore, some sales of unseen things are not valid.
9. *Third figure, first mood*: All wheat is susceptible to usurious exchange; all wheat is edible; therefore, some edibles are susceptible to usurious exchange.
10. *Third figure, second mood*: All wheat is susceptible to usurious exchange; some wheat is edible; therefore, some edibles are susceptible to usurious exchange.
11. *Third figure, third mood*: Some wheat is susceptible to usurious exchange; all wheat is edible; therefore, some edibles are susceptible to usurious exchange.
12. *Third figure, fourth mood*: No wheat may be (validly) exchanged for its own kind (i.e., wheat) in unequal amounts; all wheat is edible; therefore, nothing edible may be exchanged for its own kind in unequal amounts.
13. *Third figure, fifth mood*: No wheat may be exchanged for its own kind in unequal amounts; some wheat is susceptible to usurious exchange; therefore, nothing edible may be exchanged for its own kind in unequal amounts.
14. *Third figure, sixth mood*: Some wheat may not be exchanged for its own kind in unequal amounts; all wheat is edible; therefore, nothing edible may be exchanged for its own kind in unequal amounts.

Istishāb

Āmidī provides no definition of this indicator of the law but rather moves directly into an account of the controversy over its validity.⁶ We are therefore left to define it on our own. The full Arabic designation is *istishāb al-hāl*. As we soon discover from Āmidī's account of the controversy, it has the sense of "conjoining the present with the past." As a technical term, it designates the principle that a state of affairs initiated under the terms of the law is presumed to persist so long as there is no good reason to suppose that it has come to an end. In the controversy over the validity of this principle, the example upon which the parties focus their attention is the state of ritual purity. Those who accept the principle maintain that if a man is uncertain whether the state of purity has been initiated he is not permitted to perform the *salāh*-prayer, but if he is uncertain whether that state, once initiated through scrupulous performance of the required ablution, still exists at the moment he wishes to begin performing the prayer, he is permitted to proceed with the prayer on the grounds that in the absence of positive evidence to the contrary the state of purity must be presumed to exist right up to the present moment. *Istishāb* is thus an indicator of the law in the sense that it gives rise to a definite rule: the man is permitted to perform the prayer.

The crux of the matter is the margin of doubt. Though the controversy focuses on ritual purity, the principle applies to any state initiated under the terms of the law: ownership, marriage, slavery, paternity, liability, and so on. If any uncertainty arises as to whether the state continues to exist at some moment subsequent to its initiation, then a presumption must be made in favor of its continuing existence. Those who rejected the principle of *istishāb*, Āmidī seems to suggest, maintained that when uncertainty or doubt arises concerning the present existence of a state initiated in the past one is not permitted to act as though the state existed. The continuing existence of the state is something that must be known with full certainty. In other words: when in doubt, don't.

This latter position, Āmidī says, was that taken by most Hanafīs and a party of speculative theologians. Āmidī mentions among the latter Abu'l-Husayn al-Basrī, giving the impression that he played a leading role in developing the critique of *istishāb*. The defense of *istishāb* is taken up, in Āmidī's account, by a party (*jamā'a*) of Shāfi'īs. It is perhaps significant that Āmidī does not describe *istishāb* as a doctrine embraced by the Shāfi'ī school as a whole. It appears that *istishāb* was, in the formative period of Muslim jurisprudential dialectic, a bone of contention between some Hanafīs and some Shāfi'īs. Many speculative theologians were Shāfi'īs, so it also seems at least possible that *istishāb* was a controversial topic among the Shāfi'īs themselves.

Āmidī joins the company of the defenders of *istishāb*. In support of it he proposes four arguments.

1. There is, says Āmidī, a historic consensus to the effect that if a man is uncertain whether a state of purity initiated through the proper ablution continues to exist at the time of performance of the *salāh*-prayer he is permitted to proceed with the prayer. This consensus presupposes that a thing that has come into being must be presumed to continue as it is unless there is positive evidence to the contrary (*al-aslu fī kulli mutahaqqiqin dawāmuḥ*); otherwise, one would be able to say that a man is permitted to perform the prayer when he is uncertain about the continuing existence of the state of purity *only if* he is also permitted to perform the prayer when he is uncertain about the initiation of the state of purity, since one cannot draw a distinction between the two. Similarly and conversely, one can say that a man is not permitted to perform the prayer when he is uncertain about the initiation of the state of purity *only if* he is also not permitted to perform the prayer when he is uncertain about the continuing existence of the state of purity. All this is patently contrary to the above-mentioned consensus.

Āmidī follows up the foregoing with a disjunctive argument. If it is not the case that the continuation of a state of affairs is more probable (and therefore to be presumed) than its noncontinuation, then three alternatives remain to be considered. Either noncontinuation is the more probable, or continuation and noncontinuation are equally possible. If the former, then it follows that a man cannot be permitted to perform the prayer if he is uncertain about the continuation of the state of purity, since it is likely that a condition of valid prayer has not been fulfilled. If the latter, then there is no basis for affirming either that the man is permitted to perform the prayer or that he is not permitted.

It should be noted that this argument does not claim that the principle of *istishāb* has been affirmed by a consensus in a direct way; rather, it affirms that a consensus that allows a man to perform a prayer when uncertain whether he is in a state of purity *presupposes* the principle of *istishāb*.

Āmidī records four objections to this argument.

The first objection denies that the consensus mentioned in the argument really occurred, for Mālik ibn Anas and other legists held a dissenting opinion: a man is not permitted to perform the prayer when uncertain about the continuing existence of the state of purity.⁷ Āmidī's reply: we mean by "consensus," not a community-wide consensus, but a consensus among Shāfi'ī, Abū Hanīfa, and most of the Imāms (that is to say, great masters of the fourth generation of Muslims, those who founded the schools of law).⁸ This consensus, Āmidī notes, has probative value only among those who accept

it: it is, to use Āmidī's Arabic phrase, *hujja ʿala ʿl-muwāfiq dūn al-mukhālif*.⁹ It is not, in other words, on the order of what I have called an Ijmāʿic consensus. The consensus in question will thus not carry probative value for followers of Mālik. Āmidī's reply indicates that the dialectic he is recording is limited to Shāfiʿīs and Hanafīs. Ibn Hanbal and the Hanbalīs are not mentioned at all.

Second objection: granted that the consensus mentioned in the argument did occur, it is not the case that this consensus presupposes the principle of *istishāb*—in other words, that the existence of the state of purity is improbable in the event of uncertainty about the initiation of this state and that it is probable in the event of uncertainty about its continuation after initiation. For if the existence of the state of purity was probable in the former of these two situations, it would not necessarily follow that the performance of the prayer would be permitted. There are in fact known instances where the existence of the state of purity is probable but the performance of the prayer is actually forbidden: when one has slept after completing the ablution or fainted, one is forbidden to perform the prayer, even though the continuation of the state of purity after sleeping or fainting is probable. As for the latter situation, uncertainty about the continuation of the state of purity, it is not necessarily the case that the continuation of the state of purity is probable in this situation, since in fact one can think it probable that a defilement has occurred without being certain of this. Uncertainty exists, in other words, in different degrees. Āmidī's reply: the case of sleeping or fainting between initiation of the state of purity and performance of the prayer does not support the first part of this objection, since sleeping, fainting, having fits, and the like render prayer invalid because of certain defiling secretions emitted more readily during sleep. As for the situation in which there is a probability of defilement that falls short of certainty, this is different from the situation in which there is mere uncertainty about the continuation of the state of purity without a probability of defilement. In the former, performance of the prayer is not permitted; in the latter, it is.

The third objection carries a further concession: granted that it is the case that the state of purity (or impurity), once initiated, must be presumed to continue to exist in the absence of positive evidence to the contrary (and that the above-mentioned consensus attests that this is so), it does not follow that this is the case with regard to all states that come into being. Āmidī's reply: if this principle of probable continuation did not apply to all states that come into being, then to say that it applies to the state of purity (or impurity) would be to make this state an exception to what is generally the case without adequate justification.

Fourth objection: it is not the case that with all things that come into being a presumption must be made in favor of continuation, since moments of time and movements come into being and yet must be presumed to cease to exist immediately thereafter. Āmidī's reply: we have claimed only that continuation is to be presumed in regard to things whose continuation is inherently possible, nothing more.

2. Āmidī continues: both reason and convention permit a judge to decide a case on the basis of a state or condition (for example, ownership, marriage, indebtedness) that came into being long before the moment of judicial decision and to correspond, if necessary, with persons who witnessed the initiation of the state or condition and can bear testimony in the present to what happened. If it was not the case that a state, once initiated, is presumed to exist until there is positive evidence to the contrary, this would not be so.

Objection: reason and convention permit these things, not because the continuation of states is probable, but because certain objectives may possibly be thereby accomplished. It is like the throwing of a dart at a target. One throws a particular dart even if it is unlikely that one will hit the target with each throw: the throwing of the dart is undertaken only because of the *possibility* that the dart will hit the target. Āmidī's reply: one acts upon mere possibility, as against probability, only when the task undertaken is relatively trivial, as in the case of hitting a target with a dart. Judging cases is a much more momentous and important undertaking, more like taking a long trip across seas and deserts: one demands probability as a basis for action.

The remaining two arguments proffered by Āmidī entail considerations that are much more speculative and philosophical than those contained in the preceding arguments and much less jurisprudential in flavor. I shall simply state these arguments without belaboring my reader with the fine points raised in the objections and rebuttals.

3. The probability of permanence is greater than the probability of change, for that which persists depends only on the existence of a future time and on the concomitance of the persisting thing with that time, whereas change depends on three things: the existence of a future time, the replacement of a thing's existence with nonexistence, and the concomitance of the thing's nonexistence with the future time. What depends on two things is more probable than what depends on the same two things plus a third thing.

4. When an accident is present in something that persists in itself, that is to say, in a substance, then it can be said that the persistence of the accident is more probable than its changing into something else (ceasing to exist). This is because the persistence does not require a cause, whereas change requires a cause. The reason why persistence does not require a cause is as follows. If

it required a cause, then either an effect would proceed from the cause or it would not. If the former, then either the effect would itself be the persistent thing or it would be something that comes into being. The first is impossible; the second is contrary to what is assumed regarding effects. If an effect did not proceed from the cause, then it is meaningless to speak of a cause. Change, however, requires a cause; otherwise, things are self-annihilating, which is impossible. Now if persistence does not require a cause, nonpersistence must be due, not to absence of a cause, but to an obstacle to persistence. Nonexistence can be due, in other words, to only one factor (an obstacle), whereas change may be due to either of two factors (a cause or an obstacle). Therefore, nonpersistence is less likely than change, which is to say that persistence is more likely than change.

Scriptures that Came through Earlier Prophets

We may now turn to Āmidī's account of the controversies relating to those indicators of the law that "are believed [by some] to be valid but are not so" (*mā zunna annahu dalīl saḥīḥ wa-laysa kadhālik*). It is somewhat striking that of the four indicators in this category Āmidī devotes fourteen pages of the *Ihkām* (1914 Cairo edition) to scriptures that came through earlier prophets and nine pages to the doctrine of the individual Companion (*madhḥab al-sahābī*), while devoting fewer pages to the better-known subjects of *istiḥsān* and *al-masāliḥ al-mursala* (six to the former and only two to the latter).

The Arabic title I am here rendering as "scriptures that came through earlier prophets" is *sharʿ man qablanā*, literally, the Sharīʿa (or, to reflect Muslim thinking more accurately, the Sharīʿas) of those who preceded us (Muslims). The ensuing discussion makes it clear that "those" is a reference to earlier prophets, not communities.¹⁰ My reason for rendering *sharʿ* as "scriptures" is simple. Sharīʿa law is always embedded first and foremost in a scripture. Furthermore, as we proceed into Āmidī's account, we find him referring regularly to earlier scriptures, particularly the Torah. It soon becomes clear that he has in mind scriptures as given *originally* through earlier prophets, not extant scriptures in the possession of the other religious communities, much less laws that the scholars of those communities develop on the basis of those scriptures. Since the earlier scriptures in their extant form are unreliable, the Muslim community depends for its knowledge of what in those scriptures is authentic and what is not upon inspired guidance from the Prophet.

Āmidī records two controversies relating to earlier scriptures. The first focuses on the issue of whether the Prophet was, prior to his call, subject to the laws of any one of the earlier prophets, while the second turns to the issue of

whether the Muslim community (including the Prophet himself subsequent to his call) is subject to laws of earlier prophets. Since the first issue has no practical bearing upon the task of formulating law for Muslims, I shall confine the reader's attention to the controversy over the second issue. As a matter of interest, however, a few points concerning the first controversy may be noted. Āmidī's account indicates that some jurists were clearly uneasy with the notion that the Prophet Muhammad was, prior to his calling and subsequent reception of new guidance from God, subject to no divinely revealed law at all. But if he was subject to such law, *which* law would that have been? That revealed through Moses? Through Jesus? Through Abraham? Through Noah? All these possibilities were entertained by some. If Muhammad was subject to a particular law, then presumably that law was available to him in some way that the discussion does not specify. While he would hardly have been counted a member of either the Jewish or Christian community as these existed in his time, he would necessarily have been in some ideal sense a follower of Moses or Jesus or Noah or Abraham. Āmidī's own position on the issue under consideration is that while it is theoretically possible that the Prophet followed the law of a particular earlier prophet we cannot know whether he in fact followed such a law or not. Āmidī is, in other words, noncommittal.

On the second and, jurisprudentially speaking, more momentous issue the positions recorded by Āmidī are as follows. According to the Hanafis, some Shāfi'is, and (as reported in one tradition) Ahmad ibn Hanbal, the Prophet, after his call, treated as authoritative those parts of the earlier scriptures that he knew through divine revelation (*wahy*) to be authentic. The Ash'aris and the Mu'tazilis, by contrast, denied this. If we take the Ash'aris and Mu'tazilis to represent speculative theologians in general, then it would appear that the rejection of the authority of the earlier scriptures for Muslims united the speculative theologians against others in this controversy. As we review the arguments advanced by the two groups, we find that the former group depends entirely on textual arguments while the latter—the speculative theologians—is more inclined to rational argumentation.

Āmidī quite naturally takes the view of the speculative theologians, supporting it with the following four arguments:

1. The story of the Prophet's appointment of Ma'ādh as judge over the Yemen makes no mention of earlier scriptures as a basis for judicial decision. The Prophet, it will be recalled, asked Ma'ādh upon what basis he would make his decisions. Ma'ādh replied in effect that he would first consult the Qur'ān, then the Sunna, and finally, if no basis was found in these sources, he would reply upon his discretion (*ra'y*, taken in the standard interpretation to be a reference to the use of analogy, as noted

in an earlier chapter). The Prophet approved Ma'ādh's reply. If the earlier scriptures were among those things upon which judicial decisions were to be made, the Prophet would surely have demanded that they be mentioned along with the Qur'ān and the Sunna.

2. If the Prophet and his community were under the authority of earlier scriptures, then the learning of those scriptures would have been a communal duty (*fard al-kifāya*); whenever the earlier scriptures contained a rule of law covering a situation that arose within the Muslim community the Prophet would have been obliged to refer to those scriptures rather than depend on fresh revelation from God. Moreover, the Companions of the Prophet would have been under an obligation to refer to the earlier scriptures (presumably, those parts whose authenticity had been confirmed by the Prophet) in their own discussions. Since nothing of this sort has been reported, we must conclude that the Prophet and the earliest Muslim community did not treat the earlier scriptures as authoritative.
3. If the Prophet treated either a part or the whole of an earlier scripture as authoritative, then the law that Muslims follow cannot be attributed in its entirety to the Prophet Muhammad. It cannot be called *sharīʿat muḥammad*. But this is contrary to the Ijmāʿ.
4. It is agreed by all—that is to say, incorporated into the Ijmāʿ—that the corpus of law that came through the Prophet Muhammad abrogates the earlier corpora of divinely revealed law. If the Prophet had treated the earlier law as authoritative, he would in effect have been confirming earlier law, not abrogating it.

Against these arguments, the opposing side marshals a number of Qur'ānic and Sunnaic texts, and Āmidī is obliged to respond to each.

1. Qur'ān 6:90: "Those are they whom God has guided; so follow their guidance." God, it is argued, is here speaking of the earlier prophets, commanding that their guidance be followed. Āmidī's response: the guidance mentioned in this verse is guidance common to all the prophets. This embraces only the affirmation of God's oneness (*tawḥīd*) and the rational proofs of that oneness. It does not embrace law as such. But even if we take it to embrace law, this can be understood to include only law common to the earlier corpora and the corpus revealed through the Prophet Muhammad so that the command to follow it amounts to a command to follow what is revealed through Muhammad.

2. Qur'ān 4:163: "We have revealed to you as We revealed to Noah," 42:13: "He has ordained for you the [same] religion that He commended to Noah," and 16:123: "Then We revealed to you: 'Follow the creed [*milla*] of

Abraham.” Do these verses not show that there is an obligation to follow what was revealed through Noah and Abraham? Āmidī’s response: the first verse proves only that God revealed to the Prophet *as* he revealed to other prophets. It does not prove that the content was identical. But even if we assume that there was a common content, the most we can say on the basis of this verse is that what was revealed to the Prophet Muhammad was *similar* to what was revealed to earlier prophets; there is no necessity here for affirming the authority of earlier scriptures for Muslims. As for the second and third verses, the words “religion” and “creed” refer here to affirmation of the oneness of God, not to a corpus of law.

3. Qur’ān 5:44: “Surely We sent down the Torah, wherein is guidance and light; thereby the Prophets...gave judgment.” Is not the Prophet Muhammad included under “the prophets”? Surely, then, he was under obligation to give judgment on the basis of the Torah. Āmidī’s response: if indeed this verse speaks of any obligation that rests upon prophets, it is the obligation to proclaim something common to all scriptures and not unique to the Torah, namely, the oneness of God. It is not an obligation that relates to the particulars of a given corpus of law.

Before leaving aside these Qur’ānic texts, Āmidī notes one final point. If these texts were commanding Muslims to abide by the corpora of law revealed through Noah, Abraham, Moses, and other prophets, they would be asking for something impossible, since these corpora differ from each other in respect to details. One can only follow one corpus.

The following Sunnaic texts now emerge.

1. It is related that retaliation was once sought from the Prophet over a broken tooth, and the Prophet said, “The Book of God requires retaliation.” The only book that requires retaliation in the matter of a tooth is the Torah, which says, “A tooth for a tooth.” Āmidī’s response: we do not agree that the Qur’ān does not include the principle of a tooth for a tooth, for 2:194 says: “Whoever attacks you, attack him with the likes of his attack against you.” The general language of this verse includes tooth-for-tooth retaliation.

2. The Prophet once said, “Whoever sleeps through the prayer or is made to forget it, let him perform the prayer when he remembers it,” and he recited Qur’ān 20:14: “Perform the prayer in My remembrance.” Now this verse was part of a divine communication to Moses. Āmidī’s response: God did not mention the communication to Moses because that in itself was what made prayer mandatory in the event of sleep or forgetfulness. Rather, what did make this mandatory was what was revealed to the Prophet Muhammad, and he was simply pointing out that his community was so commanded, just as Moses had been so commanded.

The Doctrine of a Single Companion

The word *madhhab*, here translated as "doctrine," commonly refers to the legal formulation of any mujtahid considered in respect to the authority it carries for persons who are not qualified to engage in *ijtihād* and who are therefore dependent upon the expertise of a mujtahid they choose to follow. This authority is lowest in the Islamic pyramid of authority. One could perhaps say that, for a commoner, the *madhhab* of a mujtahid is an indicator of the law. But the word "indicator" (*dalīl*) is, by the conventions of Islamic theoretical jurisprudence, not used in this way but is rather restricted to what constitute indicators of the law for *mujtahids*.

Āmidī's account of the controversy we are now to consider shows that there was a body of opinion among the Muslim jurists that accorded to the *madhhab* of a Companion of the Prophet a special place within the pyramid of authority,¹¹ higher than the *madhhab* of the mujtahid of any other generation but lower, certainly, than other indicators of the law. By making the *madhhab* of a single Companion authoritative for all mujtahids of subsequent generations, this way of thinking in effect raised that *madhhab* to the status of an indicator of the law in its own right. Only for the generation of Companions was it not an indicator.

The urge to accord a special place in the divinely ordained order of things to the Companions of the Prophet runs very strong in the veins of Sunnī Islam. We have already noted the tendency of some jurists to affirm the universal trustworthiness of the Companions as the original witnesses to the Prophet's recitation of the Qur'ān and to his sayings and deeds. We have also noted the insistence of some upon the exclusive or at least superior authority of the Ijmā' of the Companions. Now we are confronted with the practice of according superior authority, if not an authority quite equal to the Ijmā', to declarations of individual Companions. This practice seems but one step removed from treating the saying of an individual Companion as the expression of a tacit consensus (*ijmā' sukūṭī*), a practice that, as we have noted, is very common throughout the *Ihkām*.

Āmidī lays out the positions of the jurists in regard to this subject as follows. The Ash'arīs and Mu'tazilīs—that is to say, the speculative theologians—took the view that the *madhhab* of a single Companion carried no special authority. Shāfi'ī and Ibn Hanbal are also said, in certain traditions, to have held this view. On the other hand, Mālik ibn Anas is said to have held that the *madhhab* of a single Companion carries a special authority that places it above analogy in the hierarchy of indicators. In this view, a mujtahid should, after having explored the Qur'ānic, Sunnaic, and Ijmā'ic texts without result but *before* seeking to establish an analogy, take into account

the declaration of any individual Companion that may come to his attention. This view is also attributed to Shāfi'ī and Ibn Hanbal in certain traditions, so that we find these two great masters placed by conflicting traditions on both sides of this controversy.

One may ask at this point: did not the doctrinal positions of individual Companions differ from Companion to Companion? Was not raising these positions to the status of indicators of the law therefore tantamount to erecting contradictory indicators? When the Companions agreed on a particular point, it was, of course, not the authority of a particular *madhhab* that was at work but rather the authority of the Ijmā'. How, then, could the *madhhab* of an individual Companion, given the possibility of its being in conflict with the *madhhab* of some other Companion, be accorded the status of an indicator? Nowhere in Āmidī's discussion is there a suggestion that the particular *madhhab* was to be accorded authority only if it was not in conflict with another *madhhab*. It was certainly possible, one would think, for a Companion to declare his opinion on a particular matter without there being, on the one hand, a conflict between that opinion and the opinion of another Companion and, on the other hand, complete unanimity of all the Companions.

Such a situation could arise when a particular matter requiring a legal solution came to the attention of a Companion and he, after engaging in the requisite *ijtihad*, enunciated his position, which then became known to some *but not all* of the other Companions, who agreed with his position. However, it is clear that the jurists who embraced the authority of the *madhhab* of the individual Companion did not limit this authority to such situations. We are left with the distinct impression that the *madhhab* of the individual Companion represents, for these jurists, a category of indicators that could in principle contradict each other. Other indicators only *seem* to contradict each other. Where contradiction arises, it is due to the limitations of the mujtahid, his inability to arise above the ambiguities or uncertainty of the indicators, despite his sustained efforts to do so through the utilization of contextual clues. If the work of mujtahids could be done with consummate perfection, differences would not arise. The law is, after all, in and of itself, as an element within the divine speech, perfectly consistent. It deals with different situations and times differently (as our consideration of the phenomenon of abrogation showed), but it never contradicts itself.

Those jurists who raised the *madhhab* of the individual Companion to the status of an indicator probably did not mean to throw doubt on the inner consistency of the law. Rather, they seem to have been admitting into the category of indicator an indicator that functioned in the manner of any

madhhab while remaining above the *madhhab* of the ordinary mujtahid of a later generation. Utilization of the *madhhab* of a particular Companion in the formulation of law thus amounted to a sort of higher-level *taqlid*, a subject to be discussed in a later chapter. Presumably, when a mujtahid of a later generation confronted doctrinal differences among the Companions, he was entitled to follow the *madhhab* of his choice.

Āmidī, as a good speculative theologian, rejects the indicator-status of the *madhhab* of the individual Companion. He argues that the Qur'ānic verse used to support the use of analogy as an indicator of the law, namely, 59:2 (*fa'tabirū yā ūlā'l-absār*), can also be used to disprove that the *madhhab* of the single Companion carries special authority such that one must give it precedence over the use of analogy. The opposing side, in turn, advances the following arguments:

1. The Qur'an affirms, "You are the best community that has been raised up for mankind. You enjoin right conduct" (3:110). This statement, runs the argument, is addressed to the Companions, declaring that what they enjoin constitutes right conduct (*ma'rūf*). Since there is an obligation to engage in right conduct, we are under obligation to follow the enjoining of the Companions. Āmidī's reply: this verse is used in support of the authority of the Ijmā'; although its use in that connection is problematic, it can be said that if it has any probative value at all it is more supportive of the authority of the consensus of the Companions than of the authority of the *madhhab* of an individual Companion.

2. The Prophet declared, "My Companions are like the stars. [When] you imitate any of them, you have been guided aright" and "Imitate those after me, Abū Bakr and 'Umar." These statements are clearly singling out the Companions as occupying a special place within the historic Muslim community. They could not, therefore, be referring to the ordinary deference (*taqlid*) one shows a mujtahid, since this does not distinguish the Companions from mujtahids of other generations. Āmidī's reply: these statements do not contain any expressions that indicate that those addressed are to imitate the Companions in all matters. It is therefore possible that the intended meaning is that the Companions are to be imitated in respect to what they report in the way of sayings or deeds of the Prophet. This meaning is at least as likely as the more general meaning.

3. The indicator status of the *madhhab* of the individual Companion is supported by the Ijmā'. After the death of 'Umar, 'Abd al-Rahmān ibn 'Awf nominated 'Alī as caliph on condition that 'Alī imitate the two previous caliphs. 'Alī refused, whereupon 'Abd al-Rahmān nominated 'Uthmān, who accepted the condition. Since no one objected to this action, we may regard

it as supported by the Ijmāʿ. Āmidī's reply: "imitate," as noted above, does not necessarily refer to imitation in all matters. Furthermore, it is agreed that the *madhhab* of the individual Companion is not authoritative for fellow-Companions. Therefore, we must conclude ʿAbd al-Rahmān had in mind imitation in regard to public policy.

4. Several rational arguments may be used in support of the indicator-status of the *madhhab* of the individual Companion.

First, if a Companion expresses an opinion in favor of a rule of law that is in conflict with an analogy-based rule, then either the Companion has a basis for his opinion or he does not. It is impossible that he should not have a basis. Since he has in effect rejected the analogy-based rule, his basis must necessarily be textual. Consequently, his opinion has a basis that is superior, in the hierarchy of indicators, to analogy; it must therefore be treated as authoritative. Āmidī's reply: this same argument can be made with respect to an opinion expressed by a mujtahid of the following generation, that of the Successors.

Second, if the view of a Companion gains wide circulation and no one objects to it, it is treated as authoritative. This must mean that it is authoritative in itself, quite apart from its wide circulation. Āmidī's reply: when the view of a Companion gains wide circulation and no one objects, then either this circulation without objection encompasses the entire community and is therefore constitutive of an Ijmāʿic consensus or it is not. If the former, it is the Ijmāʿ that is authoritative, not the view of the Companion as such. If the latter, then the view of the Companion carries no authority. Furthermore, this same argument can be applied to the generation of the Successors.

Third, the *ijtihād* of a Companion outweighs the *ijtihād* of a Successor (and therefore of a mujtahid of any subsequent generation) owing to his having witnessed the revelatory event and to his greater awareness of nonliteral meanings, of conditions attending the Prophet's sayings and deeds, and of the intentions of the Prophet. Therefore, the status of the Successor vis-à-vis the Companion is like the status of a commoner vis-à-vis a mujtahid of any later generation beginning with the Successors. Āmidī's reply: the *ijtihād* of a Companion does not outweigh the *ijtihād* of a Successor because it is possible for a Companion to be inferior to a Successor in regard to those qualities that qualify a scholar for *ijtihād*, in spite of his being distinguished from the Successor in respect to those qualities that are constitutive of the status of Companion.

Istihsān

The term *istihsān* denotes a category of indicators of the law that, according to Āmidī's opening statement, is accepted by the Hanafis and was accepted

by Ahmad ibn Hanbal,¹² but is rejected by all others. The sentiment behind the rejection found expression in Shāfiʿi's dictum: "Whoever utilizes *istihsān* arrogates to himself the role of legislator" (*man istahsana faqad sharra'a*).

But the dispute over *istihsān* entails distinctly different understandings of what *istihsān* is;¹³ unless careful attention is given to the definition of this term and to clarification of what really is at issue, confusion will result. Āmidī therefore devotes most of his relatively brief discussion of *istihsān* to definition and clarification. When he finally does turn to the controversy itself, he is able to say all that he wishes to say about it in slightly less than two pages.

The word *istihsān*, Āmidī first tells us, has a respectable place within the vocabulary of Islam: it is used in both the Qurʾān (7:145, 39:18) and the Sunna and may be found in statements by a number of great Imāms (founders of schools). Even Shāfiʿi is reported to have made such statements as "I deem it proper [*astahsinu*] that the compensation [paid to a divorced woman] be thirty dirhams" and "I deem it proper [*astahsinu*] that the preemptor hold the right of preemption up to three days." The most famous Sunnaic text that makes use of this word (or, rather, of a phrase tantamount to it) is the Prophet's statement, "Whatever the Muslims deem proper [or good] is proper with God" (*mā ra'ā 'l-muslimūna hasanan fa-huwa 'inda allāhi hasan*). The issue the jurists debate among themselves therefore has nothing to do with the permissibility or impermissibility of use of the word. Rather, it has to do with a particular meaning the word has acquired in the usage of some (but not all) jurists.

Āmidī gives us a rundown on the different definitions that Muslim jurists have given the term. Only one of these, we discover, presents us with an *istihsān* that is truly controversial. Before considering it, we shall review those definitions that present us with a noncontroversial *istihsān*. These, except for one, make *istihsān* a type of weighing of conflicting indicators: a procedure rather than an indicator in its own right. Āmidī explores this procedure (called *tarjih al-adilla*) in the final section of the *Ihkām*. We shall therefore return to the subject later.

It should be noted, before considering the several definitions mentioned by Āmidī, that all of them, both the one that present us with a controversial *istihsān* and those that do not, are attributed to Hanafī jurists. From this we must conclude that the *istihsān* so often regarded as a hallmark of the Hanafī school might or might not be rejected by members of other schools, depending on how it was defined. This fact perhaps helps to explain why acceptance of *istihsān* could be attributed to Ahmad ibn Hanbal.

The first definition to come to Āmidī's attention makes *istihsān* "an indicator that is intuitively sensed by [literally, sparked in the soul of]¹⁴ the mujtahid

who is unable to bring it into the open because no precise expression of it [in the texts] comes to his aid.” No one, says Āmidī, disputes the acceptability of *istihsān* as thus defined, provided the mujtahid’s intuition is truly shaped by his general familiarity with the law and its indicators so that the indicator that is “sparked in his soul” may with confidence be regarded as genuine and not as a by-product of his own fancies. If there is any debate connected with this indicator, it is purely terminological: should it be called *istihsān* or not?

According to the second definition, *istihsān* is “a departure from one analogy-based rule in favor of another that is based on a more forceful analogy.” “More forceful” (*aqwā*), in this connection, clearly describes an analogy that more fully meets the various conditions required of a valid analogy (as discussed in chapter 12). The definition, Āmidī notes, excludes the departure from an analogy-based rule in favor of a text-based rule (an acceptable procedure, but not subsumable under *istihsān*) or in favor of a custom-based rule (an unacceptable procedure, as we shall soon see).

The third definition harks back to a topic dealt with earlier in the *Ihkām*: *istihsān* is “the according of specificity to an analogy-based rule by virtue of an indicator that is more forceful than the analogy.” Āmidī quickly points out that *istihsān* as thus defined falls under the heading of “restriction [of operation] of an occasioning factor” (*takhsīs al-‘illa*). We noted in chapter 12 that the jurists disagreed as to whether an occasioning factor could be thus restricted and yet serve as the basis of a valid analogy. An example cited in the earlier discussion was the Qur’ānic statement “Marry those women who are pleasing to you” (4:3). If we treat attractiveness (the ability to please) as an occasioning factor behind the rule that permits (or recommends or enjoins, depending on one’s view of the functioning of the imperative form of verbs) marriage, then we are constrained to admit that this factor is not operative in certain cases—for example, when an impediment such as consanguinity is present. Some jurists considered that such restriction on the operation of an occasioning factor rendered it invalid; others did not. Some Hanafis who took the latter position, it appears, chose to place this restriction under the heading of *istihsān*.

Āmidī next considers definitions offered by Karkhī and Abu’l-Husayn al-Basrī, shows their inadequacy, and then propounds a definition of his own. In attempting this improvement on the two definitions, he seems, despite his own Shāfi‘ī affiliation, to be entering the arena of intra-Hanafī dialectic. More precisely, he seems to be attempting to frame a definition that expresses more effectively than the other two definitions the conception of *istihsān* that was present in the minds of their authors. I shall not here detain my reader with the definitions of Karkhī and Abu’l-Husayn and with Āmidī’s criticisms of

them but shall let matters rest with Āmidī's own definition. According to it, *istihsān* is "a turning back from a rule based on a specific indicator in favor of a contrary rule based on a subsequently discovered but more forceful indicator." Āmidī notes that the more forceful indicator may be drawn from the Qur'ān, the Sunna, the Ijmā^c, or some other category of valid indicator. This last phrase, we soon discover, excludes custom. *Istihsān* as thus defined is clearly fully acceptable, although we may infer from the general tenor of Āmidī's discussion that he is not willing to treat it as an indicator in its own right. As noted above, it is a procedure for dealing with indicators.

Having presented us with the above definitions of *istihsān*, Āmidī is able to turn to the definition that lays before us the real bone of contention in the controversy over *istihsān*. According to it, *istihsān* is "a departure from a rule based on a [valid] indicator of the law in favor of a rule based on custom." The real issue before us, therefore, is whether custom can be utilized in the formulation of the law. The definition presupposes that a mujtahid does not turn first to custom in seeking a rule governing a case before him but that he rather turns first to the textual indicators and to analogy. If the rule that emerges from these efforts is in conflict with custom, he then defers to custom.

This custom cannot be one that is community-wide, for any community-wide custom falls in the category of Ijmā^c, and it is the Ijmā^c that carries authority, not the custom *qua* custom. Ijmā^c, let us remember, embraces not only universally accepted verbal formulations (*aqwāl*) but also universally accepted practices and behavior. Thus one may speak of Ijmā^cic custom, and the departure from a rule based on some indicator in favor of a rule based on this custom belongs within the acceptable range of procedures for weighing indicators against each other, provided the Ijmā^c constitutes the more forceful indicator.

It is thus deference to regional, local, or merely popular custom (the last of these being custom current among commoners but not endorsed by a consensus of mujtahids) that is at issue. *Istihsān* that entails such deference is, Āmidī argues, patently invalid. He proceeds to examine and demolish the arguments used to support it. The brevity of the entire account of this controversy suggests that very few jurists, even among the Hanafis, accepted *istihsān* of this sort. Indeed, the case for it seems to have been generally regarded as weak. And Āmidī gives us no reason to believe that it was this *istihsān* that Abū Hanīfa and Ahmad ibn Hanbal, the two Imāms mentioned at the outset of the discussion, accepted. Indeed, one gets the impression that many Hanafis considered their master to have most definitely *not* accepted this *istihsān*.

The case rests upon an appeal to the Qur'ān, the Sunna, and the Ijmā^c. The following Qur'ānic texts are cited.

1. “Who give ear to the Word and follow the fairest of it” (*ahsanah*, 39:18). This verse, it is claimed, and its context indicate that the one who follows the fairest of the Word is praised and rewarded. But, responds Āmidī, it does not indicate an obligation to follow it. It is difficult to understand what the phrase “the fairest of the Word” has to do with custom. Is “fairest” here interpreted to mean fairest as determined by the standards of custom? Āmidī’s point seems to be that however one may interpret the phrase, the verse gives us no reason to suppose that it is an indicator of the law.

2. “And follow the fairest [*ahsan*] of what has been sent down to you from your Lord” (39:55). Here, it is argued, we have a command (represented by the imperative form of the verb) to follow the fairest of what has been sent down; the command would not be appropriate if “the fairest” was not authoritative. Again, we may wonder whether this means the fairest as determined by custom. Āmidī seems to assume so in his reply: the verse does not indicate that the practices people follow constitute a revealed indicator,¹⁵ much less the fairest of what has been sent down. This reply would seem to apply to the first Qur’anic passage as well.

As for Sunnaic support, this is found in the well-known saying mentioned earlier: “What Muslims deem proper [or good] is proper with God.” If what Muslims deem proper was not authoritative, it would not be proper with God. Āmidī’s reply: this saying cannot be taken as proof that what individual Muslims see as proper is proper with God, since this would mean that whatever an ignorant commoner sees as proper is proper with God. It can therefore be taken as supportive only of the authority of the Ijmā‘, of what Muslims collectively see as proper.

Finally, it is argued that the Ijmā‘ has in certain instances been based upon custom. This point seems to presuppose that an Ijmā‘ic consensus necessarily emerges out of reflection upon indicators, that it cannot be entirely gratuitous, entirely without a basis. As we noted in chapter 5 in Part II, most Muslim jurists, though not all, took this position.¹⁶ Once the Ijmā‘ic consensus was formed, the necessity of retaining the basis disappeared; consequently, future generations had only the consensus itself to work with. The argument under consideration thus seems to be stating that in some cases the basis was not a text or an analogy but a customary practice. Āmidī’s reply makes sense, given this understanding of the argument. The reason the customary practice could be treated as an indicator is not that custom carries authority in and of itself, but rather that the mujtahids who participated in the consensus-making process were aware of some endorsement of the customary practice on the part of the Prophet.

Al-Masālih al-Mursala

Āmidī's discussion of *al-masālih al-mursala* takes us back to a subject that has already been broached in chapter 13 of Part II.¹⁷ The reader may in fact find it helpful, before proceeding, to reread the earlier discussion. There the central topic was the method of determining the occasioning factor behind a rule by using the principle of suitability. A feature of a case was defined as suitable if the rule it occasioned gave rise to something that was capable of being regarded as an objective (*maqṣūd*) of the Legislator. This objective could be either the attainment of some benefit (*maslaha*) or the avoidance of some harm (*mafsada*). Thus the notion of suitability was closely tied to the notions of benefit and harm. Once a feature of a case had satisfied the suitability test, one further test was to be applied to it: it had to be shown to have been actually taken into account by the Legislator. If textual evidence existed to this effect, the feature in question was classified as *mu'tabar*, "taken into account." In my earlier discussion I attempted to make sense of this further requirement. The principle point is that a feature could be suitable and still not in fact be the occasioning factor behind a rule, for textual evidence could sometimes be cited that showed that a suitable feature was deliberately set aside by the Legislator. In this event the feature was classified as *mulghāh*, "excluded from consideration."

If textual evidence for a feature's having been taken into account or deliberately excluded from consideration was lacking, the feature was classified as *mursal* (plural *mursala*). This term, which can perhaps be most appropriately translated as "textually undefined," is best retained, for the purposes of the present discussion, in its Arabic form. In the earlier discussion we learned that a feature of a case that satisfied the suitability test but was *mursal* could not be the basis for a valid analogy. Thus if the Legislator says simply, "The drinking of *khamr* is forbidden," and the mujtahid decides that the power of *khamr* to intoxicate satisfies the suitability test by virtue of its being related to an objective of the Legislator—namely, the preservation of rationality—but he does not find evidence that in forbidding *khamr* the Legislator actually took this feature of *khamr* into account, he may not proceed to develop other rules on the basis of analogies that entail the factor of intoxication. As Āmidī earlier pointed out, it is possible for the Legislator, in establishing a rule, to exclude from consideration factors that contribute to the preservation of rationality. Therefore, in the absence of evidence that he has taken such a factor into account, we may not presume that he has taken it into account. We must, rather, treat his having taken it into account and his having excluded it from consideration as equal possibilities, with neither enjoying preponderance over the other.

The objectives of the Legislator are, as we noted in the earlier discussion, inferred from cases where textual evidence does indeed show that he takes into account features related to certain objectives. What Āmidī and like-minded jurists disallow is the use of the objectives themselves to single out certain features as the occasioning factors behind given rules in the absence of evidence that the Legislator has taken these factors into account in establishing these rules. This practice was rejected because of the consequences to which it might lead. A jurisprudent might be tempted to formulate law on the basis of the objectives themselves without any regard for given rules. If intoxication is selected as an occasioning factor behind the forbidding of *khamr* simply because it is related to the objective of preservation of rationality, why bother with intoxication at all and with the construction of an analogy with the forbidding of *khamr* as the principal rule (*hukm al-asl*)? Why not work directly with the objectives of the Legislator? Why not treat those objectives as indicators of the law in their own right and formulate rules directly on the basis of them?

It is this approach to the formulation of the law that falls under the heading of *al-masālih al-mursala*, “benefits that are *mursal*.” A benefit is, it should be noted, *mursal* in the sense that there is no textual evidence to the effect that the Legislator has either taken it into account or excluded it from consideration *with reference to the particular case for which a rule is sought*. As noted above, all benefits that constitute objectives of the Legislator must have been extrapolated from specific cases in which the benefits—or particular features of the cases related thereto—are known from textual evidence to have been taken into account by the Legislator. What is at issue is whether the mujtahid has the liberty to use such a benefit as a basis for formulating a rule governing a case for which there is no textual evidence either that the Legislator has taken the benefit (or a particular feature of the case related thereto) into account or that he has excluded the benefit (or feature) from consideration.

Āmidī notes that this approach to the formulation of the law was rejected by Shāfi‘is, Hanafis, “and others.” Curiously, he does not mention any proponents of this approach, but notes simply that Mālik ibn Anas is reported to have advocated it while his followers have denied that this is so. Āmidī suggests that “perhaps” (*la‘alla*) Mālik did not mean to treat all benefits in the *mursal* category as a valid basis for the formulation of law, but only those benefits that are “necessary, universal, and certain to occur” (*al-masālih al-darūriya al-kulliya al-hāsila qat‘an*). In order to illustrate this category of benefits, he gives the following example, which depicts a situation most likely to have existed in the early days of Islam before the Muslims were spread over a large part of the earth. A hostile force of unbelievers is seeking to destroy

Islam and the Muslims. They have captured a group of Muslims and are using them as a shield. If the main body of Muslims does not attack the shield, the enemy will conquer the territory and will exterminate the entire Muslim community. If the Muslims do attack the shield, they will necessarily kill their fellow-Muslims who form the shield, even though they are guilty of no crime that is deserving of death. The killing may, *in this particular case* (*fī hādhihi 'l-sūra*), be regarded as suitable in the light of a benefit that is necessary, universal, and certain to be accomplished.

We are left to gather in what respects the benefit is thus described. It is, it seems, necessary insofar as the very existence of Islam is at stake, universal insofar as the lives of all Muslims are jeopardized (for if the Muslim offense fails both the hostages and the main body of Muslims will be killed), and certain to be accomplished insofar as a Muslim victory will without any doubt assure the continuation of Islam and the survival of the Muslim community. On the other hand, the case represented by this example (most clearly, a hypothetical case) is not one that the Legislator has dealt with, since there is no authoritative text that relates to it. Therefore, it must be said that, *so far as this particular case is concerned*, there is no evidence that the Legislator has either taken into account or excluded from consideration the benefit just mentioned (preservation of Islam and the Muslim community, both subsumable under *hifz al-dīn*). Mālik, we gather, would have approved a rule permitting (or perhaps requiring) the attack on the shield, whereas Āmidī and like-minded jurists would not.

Āmidī considers only one objection to his way of thinking. The very concept of a *mursal* benefit is, runs the argument, untenable, and the whole enterprise of denying indicator status to the *mursal* benefit is thus nonsensical, for in those cases where we have textual evidence showing that the Legislator has taken a benefit into account, what is significant is—not simply that he has taken a particular benefit into account with reference to a particular case—but that he has taken *such a thing as a benefit* into account. All benefits, taken together, represent a category, a genre. Knowing that the Legislator takes benefits into account, we may presume in all cases that a benefit has been taken into account. The problem with this argument, Āmidī points out, is that it fails to take into consideration those cases where the texts indicate that the Legislator has deliberately excluded a benefit from consideration. One could use the same logic to extrapolate from these cases that benefits, considered as a genre, are not taken into account. Since we have in the texts both cases in which benefits are taken into account and cases in which they are deliberately excluded from consideration, we are unable to make extrapolations in favor of one or the other treatment of benefits. We have no choice,

therefore, but to retain the category of the *mursal* benefit while refusing to accord it the status of an indicator.

MUJTAHIDS, MUFTĪS, AND COMMONERS

We now come to the third of the four principal sections of the *Ihkām*, the third *qāʿida*. The second *qāʿida*, it will be recalled, far exceeds the others in length, constituting slightly more than eighty percent of the entire *Ihkām*. It deals with the subject that is most central to Islamic theoretical jurisprudence (*usūl al-fiqh*), the indicators of the law and the manner of their functioning. The third *qāʿida* directs our attention to the scholars who employ the indicators of the law, who do the actual work of formulating the law—the mujtahids. As we proceed, we discover that there is a fairly broad range of issues that pertain to them, the qualifications they must meet, the limits under which they labor, the roles they play vis-à-vis the rest of Muslim society, the commoners (*al-ʿawāmm*), and the attitudes that the commoners are to take toward them. As we shall soon see, the strictly social role of the mujtahid—giving advice to commoners on legal questions—is designated by the title *muftī*. Although the Arabic title of the third *qāʿida* does not indicate an interest in the judicial function, that is also touched on in this section.

IJTIHĀD AND THE MUJTAHID

Before turning to the issues that pertain to *ijtihād* and the mujtahid, Āmidī devotes an introductory section of his discussion to the definition of these two terms and to the conditions a scholar must satisfy in order to be counted a mujtahid.¹

Defined in terms of its ordinary meaning, *ijtihād* means “a total expenditure of effort in the attempt to achieve something whose realization is burdensome and difficult.”² In the usage of the jurists, it takes on the more specialized sense of “a total expenditure of effort in seeking an opinion regarding a rule of divine law such that the one [putting forth the effort] senses within himself an inability to do more [than he has done].”³ A somewhat freer rendering of this definition might be: a total expenditure of effort in the seeking of an opinion as to what constitutes a probable rule of divine law relative to a particular case under consideration, the criterion of “total” being the sense that one has done one’s utmost and can do no more. Āmidī notes that the phrase “in the seeking of an opinion” excludes those rules that can be known with certainty from the sphere of *ijtihād* and that the phrase “rule of divine law” excludes *ijtihād* that has some other aim than seeking an opinion regarding the divine law. The phrase “such that the one [putting forth the effort] senses within himself an inability to do more [than he has done]” rules out *ijtihād* that falls short of this total exertion.

At this point we shall do well to review some basic points about the enterprise of formulating the law. I noted in the introduction that the law is not, for the most part, given to man ready-made in the form of precisely worded rules. It is rather man who must fashion, articulate, formulate those rules.⁴ In doing so, he has a kind of bedrock in the Qur’anic text, a sure starting point for the enterprise he has embarked upon. A previous theological voyage has, as we noted in chapter 1 of Part I, brought him to this point of departure.⁵ The Qur’anic text, by virtue of its miraculous character, is self-validating and, thanks to an error-free transmission process (*tawātur*), fully

authentic. Pondering the Qur'anic text, man becomes aware of rules God has ordained for him, while at the same time being directed toward other indicators of divine rules, first the Sunna and then, through both the Qur'an and the Sunna, on to other indicators. He thus faces two separate tasks: first, determining the boundaries of the textual corpus with which he must work and ascertaining the degree of reliability of each non-Qur'anic text and, second, gleaning from the texts the rules of law he is seeking, whether through interpretation of the texts themselves or through the construction of analogies and through some other means (for Āmidī, formal logic and *istishāb*). In undertaking both of these tasks, he faces many problems and uncertainties.

Āmidī's jurisprudential thinking demonstrates a strikingly frank recognition of these problems and uncertainties. Throughout this book we have witnessed his resistance to simplistic attempts to do away with problems. His discussion of the "report of the individual" (*khābar al-wāhid*), for example, makes it clear that one cannot, through a fideistic attachment to the trustworthiness of countless transmitters of Sunnaic texts, establish with full confidence the authenticity of these texts. Very few, if any, of these texts emerge from the scrutinizing that Āmidī's method of criticism demands with an absolutely unassailable authenticity. What does emerge is a body of texts with *probable* authenticity. Thus already in the first stage of man's journeying toward God's law—the text-critical stage—a cardinal principle of the jurisprudence represented by Āmidī becomes decisive: probability constitutes an adequate basis for the formulation (and, through judiciaries and enforcement agencies, implementation) of the law.

Probability exists, of course, in different degrees. On one end of the spectrum is probability that borders on certainty without crossing the crucial line—*al-zann al-muqārīb li'l-qat'* Āmidī calls it at least once.⁶ A somewhat broader category of opinion is "overwhelming opinion" (*ghalbat al-zann*). Such high levels of probability are, quite naturally, always gratifying to the scholar who discovers them; but high probability is not necessary to the enterprise of formulating the law. The slightest degree of probability will do. The slighter the degree, the greater the chance that the law thereupon formulated may have to be subsequently revised. However, for the time being, it is the law.

If probable authenticity of a text (no matter how slight) is adequate for the task of formulating the law, then probable intended meaning of a text (no matter how slight the probability) will necessarily also be adequate. This acceptance of probability as the determinant of legally relevant intended meaning is the salvation of Muslim legal hermeneutics. The texts bristle with uncertainty. Again, Āmidī resists simplistic efforts to do away with, or

minimize, the uncertainty. The imperative form of the verb does *not*, in his view, allow a presumption in favor of obligation (or, in the case of the negative imperative, in favor of forbiddenness) as the intended import. It is not, in other words, the vehicle of probable law, much less certain law. That most ubiquitous of linguistic forms engenders the sense of probability only in conjunction with contextual clues. The same goes for the equally ubiquitous and important family of forms dubbed *siyagh al-ʿumūm*, “forms signifying general reference”: they do *not*, Āmidī insists, warrant a presumption in favor of an intended general application to all particulars within a given class. Probability again—whether probability of a general reference or of a specific reference—can emerge only when word and context are conjoined and made to *work together* as indicators of the law.

This probabilism enables jurists of Āmidī’s ilk to combine a steadfast intentionalism with a realistic recognition of the uncertainties entailed in the interpretative enterprise. Nothing short of the *original intended* meaning of the texts can constitute the springboard for the understanding of the law. For those who accept analogy as an indicator of the law, one can build upon the law contained within this meaning further law; and, of course, over every intended meaning looms the possibility of abrogation, although Āmidī’s jurisprudence allows an initial presumption *against* abrogation, a presumption that is expected to be sustained in all but a few instances by search of the context. But the unlikelihood of abrogation by no means creates a safe haven for the original intended meaning: that meaning must find its way into the mind of the searching scholar against a variety of hurdles and always through the co-functioning of word and context.

Always the greatest obstacle to decipherment of the original intended meaning—God’s *murād*—is ambiguity. The imperative form of the verb is, as we have noted, ambiguous (at least for all practical purposes, according to Āmidī) on a matter that concerns the jurist more than any other: whether an act is obligatory or recommended, whether the categorization of an act is law or exhortation. The “forms that [allegedly] signify generality” are also ambiguous, for Āmidī, on a matter of great jurisprudential moment: whether a rule has a broad or restricted application. To these fundamental ambiguities, which characterize highly ubiquitous forms, must be added the ambiguity of particular words.

In insisting so frequently on the co-functioning of word and context, Āmidī makes it clear that the context he has in mind includes the entire corpus of texts. Considering that the boundaries of the *probably* authentic text are somewhat ill-defined, that scholars may differ as to whether to include this or that text within those boundaries, we come to realize that the

interpretive task and the text-critical task are truly and intimately interconnected. The approach of Āmidī's jurisprudence to the interpretation of texts is, in a very real sense, *holistic*: the whole is not simply the sum of the parts. You do not add the meaning of one text to the meaning of another text to get law. You allow the texts to function together as a total system: this is what I have had in mind in speaking of the co-functioning of word and context, for it is, in reality, a co-functioning of text and text. The scholar in quest of the law must *always* read *every* passage in the light of the *whole* body of texts. With every text that one encounters there arises the possibility of impingement of some other text, *any* other text, whether Qur'ānic, Sunnaic, or Ijmā'ic. In interpreting a text, a scholar therefore must, to the best of his ability, set his sights on the entire corpus of text. This he will never be able to do with absolute success; but he must make the attempt.

To these problems of interpretation of the texts may be added the problems involved in ferreting out the texts' implications and in constructing analogies on the basis of rules emerging from the interpretive enterprise. A careful reading of chapters 10, 12, and 13 in Part II will, I think, make these problems readily apparent.

Once we have fully grasped all the complexities that go into the task of formulating the law, we can well appreciate why Islamic jurisprudence—especially that of Āmidī and his kind—regards this task as nothing short of an ordeal: a toiling, a striving, with little prospect of achieving absolute finality or unchallengeable certainty. Law is forged on the anvil of debate. The toiling is always toiling in the presence of others and with the prospect of challenge from others. The principle of Ijmā'ic authority does little to rescue the law from the jaws of tentativeness, as chapter 5 in Part II has shown. (Here I rely, for a crucial point, upon my reader to have read that chapter carefully.) Whether a particular rule has the stamp of Ijmā'ic authority is itself, more often than not, *a matter of opinion*. At least, so Āmidī sees the matter. For reasons already given, we cannot regard all doctrine that the four surviving schools of law share, or the written compilations of Sunnaic narratives, as authenticated by the Ijmā', thus according them an authenticity equal to that of the Qur'ān. Both meanings and the texts from which they are drawn float, for the most part, on a sea of opinion, a sea of *ijtihād*. That this is so is part of the divine plan. The basics—the oneness of God, the prophethood of Muhammad, the authenticity of the Qur'ān, the clarity and firmness of its most fundamental themes—are themselves secure. They are not part of the sea, but rather its shores, its limits. They define the points at which a unilateral God-to-man communication of the great framing truths ends and a God-with-man (or man-with-God) unfolding of *his* (not man's) law begins.

The opinion mentioned in Āmidī's definition is, as comments throughout this book have made clear, *the sense of what is probable*. The toiling is thus a toiling for probability. Once the sense of probability has arisen and the scholar can claim with a clear conscience that he has done his utmost to achieve that sense of probability, that he has left no stone known to him unturned, the toil comes to an end. *Ijtihād* is not a hopeless enterprise, a striving for the impossible. It is, in short, a striving for *zann*.

Having defined *ijtihād*, the related term *mujtahid* hardly needs definition. Indeed, Āmidī defines the latter simply as "anyone characterized by *ijtihād*." (This is, of course, not a formal definition, or *hadd*, since a cognate of the definiendum is contained in the definiens.) Since *ijtihād* has the force of a verbal noun, Āmidī is in effect saying that a *mujtahid* is anyone characterized by that striving for opinion that constitutes *ijtihād*, anyone who *does*, engages in, *ijtihād*. He has much more to say about the conditions a scholar must satisfy in order to be so characterized. What these conditions suggest is that both terms (*ijtihād* and *mujtahid*) denote a status. A scholar is not a *mujtahid* merely during the time he is actively engaged in *ijtihād*; he is a *mujtahid*, rather, by virtue of possessing certain qualifications that entitle him to engage in *ijtihād*. As a status term, *mujtahid* belongs to the same order as *‘ālim*, *faqīh*, *mutakallim*, and so on.

Āmidī speaks of two conditions (or qualifications) that are required of a *mujtahid*. As we examine these, we find them to be very broadly conceived, for each turns out to be in reality a bundle of conditions. We may best describe the two conditions as a knowledge of the basics of speculative theology and a profound mastery of the science of theoretical jurisprudence (*usūl al-fiqh*). Āmidī elaborates on the first condition as follows: "[The *mujtahid*] must have a knowledge of God's existence, necessary attributes, and perfections; he must know that God exists necessarily through himself, is living, knowing, omnipotent, willing, and speaking so that it is conceivable to him that God should impose obligations [on his creatures]; and he should know that God establishes, through miracles and marvelous signs that attend the Prophet, the veracity of the Prophet and of the law he brings, so that he can be a true expounder [*muhaqqiq*] of what is transmitted from the Prophet in the way of sayings and rules."

Āmidī goes on to note that it is not necessary that the *mujtahid* be as versed in speculative theology as the specialist (*mutakallim*). He need have only enough familiarity with speculative theology to be able to give an account of the rational foundations upon which his own belief (*imān*) is based.

If the *mujtahid*'s familiarity with speculative theology need only be rudimentary, this is not the case with theoretical jurisprudence. The second

condition requires that he “must have a knowledge of the indicators of the rules of law,⁷ the various types into which they fall, how the authority of each type is established, the [various] aspects of their indicatory functioning, their rank relative to each other, and the conditions that apply to [the use of] each of them, in accordance with the explanations we have given [throughout the *Ihkām*]. He must know the ways in which conflicts between the indicators are to be resolved and how rules are to be gleaned from them; he must be able to set forth and validate these rules, defending them against challenges that may be brought against them. All this he can do in a masterful way only if he is familiar with the transmitters [of the textual material] and the ways of distinguishing the trustworthy from the untrustworthy, the sound from the weak, and familiar as well with the circumstances surrounding the revelations that came to the Prophet and with the factors that brought about the abrogation of certain verses. He must be familiar with both lexicography and grammar, although he need not be [as learned] as Asma’ī in lexicography or as Sibawayhī in grammar. Rather, he must master enough lexicography and grammar to know what meanings were assigned to words among the Arabs and their customary ways of addressing one another, so that he can distinguish between the various ways in which verbal expressions signify meanings.” Here Āmidī gives a list of all the various classes of expressions he has dealt with throughout the *Ihkām*.

All these qualifications—and Āmidī seems to mean those that fall under his second condition—are requisite only in the case of the “unrestricted mujtahid” (*mujtahid mutlaq*), that is to say, the mujtahid who formulates rules and gives opinions on the entire range of legal questions. As for the mujtahid who restricts his *ijtihād* to certain fields of law, he need only be familiar with those matters that pertain to his chosen field. All expertise has its limits. Even the unrestricted mujtahid is unqualified to deal with certain questions that arise outside the field of law.

Āmidī’s entire discussion of the qualifications required of the mujtahid displays a characteristic common to all Muslim jurisprudential discussion of this subject: a total lack of formalism. He nowhere alludes to a process of formal public certification of mujtahids. Whether a particular person is a mujtahid or not therefore in no way depends on such a process. In fact, it depends, in the final analysis, on nothing other than self-assessment. There were, of course, in medieval Islam formalized methods of accreditation for study completed under great masters: the *ijāza*. An *ijāza* was literally a license to teach: it signified that a student not only had mastered a subject matter that his mentor had imparted to him but was now capable of transmitting the subject matter authoritatively to others. But being a mujtahid has nothing to do,

in principle, with being thus licensed by great masters, whose own careers had been launched through such licenses. Whether one is a mujtahid or not is, ultimately, a personal decision. If one believes oneself to have acquired the requisite knowledge and expertise and to be ready to undertake the toilsome task of formulating the law, one is thereby a mujtahid. If one is patently an ignoramus and makes a claim to be mujtahid, one may be laughed out of court; but presumably others competent to judge would assume that such a claim was made in jest. From the opposite end of the spectrum, it may be observed that one does not become a mujtahid simply by holding licenses or by being learned in the eyes of one's superiors or peers in academia. Countless Muslims have held the credentials of learning without claiming to be mujtahids. Whether one is really ready to proceed with the tasks entailed in *ijtihād*—on an unlimited scale or within a restricted field—is, according to Āmidī's account taken at face value, a subjective matter, which can only be resolved inwardly.

There is another aspect to *ijtihād* that is obviously subjective: the sense that one has in one's efforts to discover and accurately formulate a given rule of law reached the limits of one's scholarly capabilities, that one has done all that one is capable of doing and can think of nothing further that might be done. No one can attest to having this sense other than the mujtahid himself. This sense is not a qualification for undertaking *ijtihād*, but it is a criterion of the validity of the *ijtihād* itself and of the opinion emerging from it.

Notwithstanding the subjectivity entailed in the verification of the qualifications required of a mujtahid and of the satisfaction of the central criterion of *ijtihād*, a mujtahid can hardly be effective in his social role without some kind of publicly acknowledged or certified position or status. Various possibilities present themselves beyond the mere holding of a license: one might hold a teaching appointment in an institution of learning (*madrasa*) or a high-ranking judgeship, for example. Most importantly, a mujtahid must, in order to be effective, have a following: he must earn the respect (and not just a license) from those under whom he studied but, far more importantly, he must gain recognition among his peers sufficient to give him a following among both the learned and unlearned of his generation. One need not, on the other hand, be socially effective in order to be a mujtahid. Tradition has it that mujtahids abounded in the early generations of Islam. As late as the fourth Islamic century, many great figures were hailed as mujtahids, including the historiographer and traditionist Tabarī, but only four within Sunnī Islam had followings that have survived to the present day. Many in the earlier generations may be presumed, therefore, to have been mujtahids without followings of significant size.

Āmidī concludes his introductory section by noting that *ijtihād* is allowable only in regard to rules of law whose indicators will yield nothing higher than opinion (*mā kāna min al-ahkāmī 'l-shar'iyatī daliluhu zannī*). Certain rules of law have become manifest to us through indicators that yield certainty (*al-adilla al-qat'iya*). Āmidī gives as an example the rules that impose upon Muslims the five basic religious duties of Islam: the public witness to God's oneness and the prophethood of Muhammad, the *salāh*-prayer, the *zakāh*-tax, the fast of Ramadān, and the *hajj*-pilgrimage. These duties can never be a matter of opinion for anyone. God has seen to this by supplying indicators that leave no doubt about these duties. Āmidī suggests there are other examples, but mentions none.

Āmidī records twelve controversies related to *ijtihād* and mujtahids. The first two of these are concerned with the issue of whether *ijtihād* was possible during the era of revelation. Was the Prophet himself duty-bound to follow the dictates of his own *ijtihād* when precise guidance on a particular question of law was not available from a revealed text (first controversy)?⁸ Were others free to rely on *ijtihād* while the Prophet was alive (second controversy)?

In his account of the first controversy,⁹ Āmidī has Ahmad ibn Hanbal and the great Hanafī jurisprudent Abū Yūsuf taking the position that the Prophet was indeed duty-bound to rely on his own *ijtihād*, with Shāfi'ī regarding this as possible but not as decisively proven. Some of Shāfi'īs followers and the two Mu'tazilī jurisprudents 'Abd al-Jabbār and Abu'l-Husayn al-Basrī are said to have followed Shāfi'ī's thinking. As opponents of the notion of a prophetic *ijtihād* we are given the names of two other Mu'tazilī jurisprudents: Jubba'ī and his son Abū Hāshim. A few unnamed jurisprudents are said to have held that the Prophet engaged in *ijtihād* only in matters relating to the conduct of war, not in regard to legal rules.

Āmidī himself adopts the first position, in effect rejecting the cautiousness of Shāfi'ī. Not only is it possible that the Prophet engaged in *ijtihād*; it is an actual fact that he did. The very idea of a prophetic *ijtihād* presupposes, it should be noted, that revelation (*wahy*) was not an ongoing experience in the Prophet's life, guiding him on every matter that came before him. It presupposes, in other words, that the Prophet could make pronouncements that did not constitute Sunna, much less Qur'ān. One is reminded here of St. Paul's statement, "I have no commandment of the Lord; yet I give my judgment" (1 Cor. 7:25), expressing a distinction between revealed teaching (the teaching or commandment of the Lord) and personal opinion that runs throughout Paul's writings. (This is not to say, however, that Paul's opinions would be regarded by Muslim jurisprudents as a product of genuine *ijtihād*.)

Āmidī builds the case for the Prophet's *ijtihād* on Qur'ānic and Sunnaic texts and on rational arguments. The Qur'ānic texts include five passages.

1. "Therefore take heed [*fa'tabirū*], you who have eyes" (59:2). The phrase *fa'tabirū* has been taken, by those who accept analogy as an indicator of the law, as a reference to the use of analogy, which is one of the principle tasks of *ijtihād*. (The English rendering does not do service to this particular interpretation of the phrase.) Since "you who have eyes" is a general expression, it includes the Prophet. Āmidī notes that the full debate over the import of this verse and over the generality of its language has been recorded earlier in the *Ihkām* and that the reader may refer back to the earlier discussion.

2. "Surely We have sent down to you the Book with the truth, so that you may judge between the people by that which God has shown you" (4:105). The phrase "that which God has shown" is, runs the argument, a general expression that includes both judgment through clear revealed statements and judgment involving an extrapolation from a revealed statement through *ijtihād*. But is not "that which God has shown" synonymous with "that which God has sent down," a phrase that always refers to what is revealed? Āmidī's reply: even if we take "that which God has shown" to mean the same thing as "that which God has sent down," the verse still supports our case; for *ijtihād* can be described as judging on the basis of what God has sent down.

3. "And take counsel with them" (3:159). The Prophet, it is argued, could only be enjoined to take counsel on matters subject to *ijtihād*, not on matters settled by revelation. But can we not say that the taking counsel mentioned in this verse pertains only to the conduct of campaigns? Reply: the context shows that the particular taking counsel enjoined in this verse had to do with a case of ransom, not to the conduct of a campaign. However, even if this taking counsel is said to pertain to strictly administrative matters, the verse is still useful as proof against those who deny this much.

4. "It is not for any Prophet to have prisoners until he has inflicted defeat in the land" (8:67). This was said as a rebuke against the Prophet for his release of prisoners taken at the battle of Badr, the point of the verse being that the Prophet should not in the first place have spared the lives of the enemies taken at Badr by making them prisoners. The Prophet is reported to have said in connection with this action, "If chastisement was sent down from heaven to earth, only 'Umar would escape it," because 'Umar suggested that the captured enemies be killed. This proves that the decision to release the prisoners was made by way of *ijtihād*, not by way of revelation.

5. "God pardon you! Why gave you them leave?" (9:43). Here the Prophet is clearly rebuked for an error. An error cannot arise out of revelation; therefore, it must have arisen out of his *ijtihād*. But does not this rebuke have to do

with an error made in the conduct of a campaign? How can we extrapolate from this that the Prophet engaged in personal *ijtihād* in respect to matters unconnected with the conduct of campaigns? Āmidī notes that the reply to this question has already been given in connection with Qur'ān 3:159.

As for Sunnaic texts, the following three, Āmidī argues, give evidence of prophetic *ijtihād*.

1. Sha'bī relates that when the Prophet propounded a certain rule and a portion of the Qur'ān containing a different rule would be revealed thereafter he would abandon his own judgment in favor of the revealed rule. Although Āmidī concedes that this information is based on a weak transmissional line, he nonetheless reminds his reader that even a weak tradition can, in the absence of conflicting information with better credentials, be decisive in the realm of jurisprudence.

2. The Prophet is reported to have said concerning Mecca, "Its herbs are not to be cut nor its trees lopped" (that is to say, nothing in the town was to be taken), whereupon 'Abbās said, "except for munitions." The Prophet echoed his words: "except for munitions." Obviously, this exception could not have come from revelation, but only from the Prophet's own assessment of the situation, his *ijtihād*.

3. The Prophet is reported to have said, "Scholars [*‘ulamā'*] are the heirs of the Prophets." This indicates that the Prophet resorted to *ijtihād*; for otherwise the scholars of his community could not have been considered his heirs. But is it not possible that the Prophet had in mind the conveyance of rules of law to the people and the storing of these rules in memory? These are certainly functions that the Prophet and the scholars have in common. Replies Āmidī: the literal sense of the saying is that the scholars are heirs of the Prophet by virtue of all that makes them scholars. Since *ijtihād* is part of this, they must have inherited it from the Prophet along with all else that makes them scholars.

Āmidī adds to these text-based arguments two rational arguments:

1. Right conduct achieved through *ijtihād* is more difficult than right conduct based on clear statements in texts, and the greater the difficulty of a righteous act the greater the reward, as we know from the following Sunnaic narrative. The Prophet said to 'A'isha, "Your reward will be based on the extent of your exertion," and he said, "The most meritorious of the acts of devotion are those that are the most difficult." If the Prophet did not himself act in accordance with his *ijtihād*, then he is deprived of merit that is possible for his community, which is unthinkable.

2. The use of analogy in the formulation of the law, which is an important part of *ijtihād*, entails investigation into the meanings of texts, since analogy

takes the meaning of a text (a text-based rule) as its point of departure. The Prophet was more adept at this kind of investigation than others. Therefore, it is more likely than not that, when a precise revealed directive regarding a particular case was lacking, he would formulate a rule on the basis of his *ijtihād*, since if he did not, then he was failing to make known a probable rule of law; and this negligence is universally considered to be a form of disobedience.

Any talk of a prophetic *ijtihād* raises the question of whether such *ijtihād* establishes a school of legal doctrine (*madhhab*) that other Muslims should follow and, if so, how the results of his *ijtihād* are to be distinguished from those sayings and deeds that constitute the Sunna? There is no indication in Āmidī's discussion that these questions were addressed. We can only guess that the results of a prophetic *ijtihād* would have been, in Āmidī's thinking, distinguished from the Sunna by means of clues from the Prophet ("This is my opinion" and the like) and that such results would have been in any case so overshadowed by Qur'ānic and Sunnaic revelation as to have been incapable of giving rise to a distinctly prophetic school of legal doctrine that would take its place alongside other schools. So long as revelation was possible, there was no reason for interest in mere prophetic opinion to be very keen. Furthermore, we must bear in mind that, for Muslim jurists in general, the plethora of Companions of the Prophet who were capable of engaging in *ijtihād* in the period after the Prophet's death militated against the emergence of major schools of the sort that were to emerge after the number of mujtahids had become much smaller relative to the much expanded Muslim masses. The earliest generations of Muslims were not, in the later view, under the sway of highly influential schools, although mujtahids were presumed to have clusters of adherents who followed their doctrine.

Is it possible that persons other than the Prophet—that is to say, his Companions—engaged in *ijtihād* while he was living (second controversy)?¹⁰ All but a few Muslim jurists, Āmidī tells us, answered in the affirmative. However, some of these insisted upon certain qualifications: the Companions could only engage in *ijtihād* when not in the presence of the Prophet, or only when the Prophet had authorized them to engage in *ijtihād*. Some, while conceding the possibility that the Companions engaged in *ijtihād* during the lifetime of the Prophet, denied that evidence could be found to the effect that they actually did so.

Āmidī follows the majoritarian affirmation of the possibility of this *ijtihād*. However, he takes exception to the view that the evidence is silent as to whether or not it actually occurred. The evidence, he feels, makes it at least probable, if not certain, that it did actually occur. Āmidī refers in this connection to stories in which the Prophet appoints some of his Companions

as judges over certain cases or in certain regions. Furthermore, Āmidī insists that this *ijtihād* was not limited by qualifications: the Companions could, in other words, engage in *ijtihād* in the presence of the Prophet and did not need an authorization to engage in it either in his presence or in his absence.

The third, fourth, fifth, tenth, and eleventh controversies have in common a concern with the consequences of the acceptance of disagreement among mujtahids. The very notion of *ijtihād* entailed a toleration of differences of opinion in the formulation of the law. The coexistence of multiple schools of legal doctrine in Islam, each with its own distinctive body of rules and each claiming descent from a great mujtahid of the past, represents a concrete historical manifestation of this toleration. *Ijtihād* was understood by all to be the striving for considered opinion, nothing more. In Sunnī Islam, at least, knowledge and certainty were not normally associated with *ijtihād*. The attainment of knowledge could, of course, entail effort, but the presumption was that the knowledge that God required of his creatures—particularly that foundational knowledge in which Islam as a system of belief and practice is rooted, which formed the basis of unity of the Muslim community—was fairly readily attainable. As saving knowledge, it was accessible to people of all stations, not to scholars only. As knowledge became more specialized and more dependent upon specific skills and intellectual capacities, it became more difficult to attain; but its attainment could never, even in the most rarified setting, entail the hardship that one experienced in the pursuit of considered opinion.

Knowledge, when it comes, gives rest to the soul; one senses its presence, not only through the disappearance of doubt within, but also through the corroboration one receives from one's fellows. Knowledge is a kind of breakthrough in the quest for truth. But opinion is an unfinished journey, not a breakthrough, but a stage in a progression toward truth. To be sure that one has done one's *ijtihād* properly, one cannot rely upon inward tranquility or the corroboration of others. What one aspires to feel inwardly is the sense that one has gone as far as one is capable of going in the quest for truth and can go no further, and what one receives from one's peers is not corroboration but challenge. I have described opinion (*ẓann*) as the sense of probability, of preponderance (*rājiḥ*, *ghālib*). Probability is not viewed in Islamic jurisprudence as objectively determinable, along the lines of modern mathematics. The sense of probability can vary from one mujtahid to another: what is probable for one may not be probable for another.

We can witness, I think, a tendency among many medieval Muslim jurists—especially those who were also speculative theologians—to give knowledge supremacy within the realm of “intelligible things” (*al-ʿaqliyāt*)

and opinion supremacy within the realm of the law (*al-sharʿiyyāt*). As I noted in chapter 1, medieval Muslim theology is a type of natural theology;¹¹ it holds basic verities—the existence and attributes of God, the prophethood of Muhammad in particular—to be accessible to human reason apart from revelation. Acceptance of these verities is in fact the precondition of acceptance of the revelation mediated by the Prophet, including the law, which is a central part of that revelation. This rationalist bent led certain theologians to write short popular treatises, sometimes in the form of catechisms, which would enable the common man to become acquainted with rational arguments that underlay the most basic tenets of his creed. The testimony to the most basic verities that in itself constitutes a religious duty (*shahāda*) was to be firmly grounded in reason for all Muslims. When one turned from the realm of basic verities to the realm of law, one became dependent upon texts in which divine revelation was embedded or through which it was to be discovered. In the world of texts, as opposed to the world of intelligibles, much less was certain. Beyond basic duties, such as the five cardinal acts of religious devotion, little was certain. This was due to the obscurities of the texts, the difficulties of ferreting out original intended meaning through search of a vast context, the hazards of attempting to draw analogies from that meaning, and the conflicts that seemed to exist among the plethora of indicators of the law.

Since opinion—the sense of probability—can vary from mujtahid to mujtahid, two questions arise regarding the implications of this variation. First: if one mujtahid propounds a certain rule of law as a solution for a given case and another mujtahid propounds a conflicting rule for that same case, then, considering that both rules cannot be regarded as representing the original intent of the Legislator, must we not say that one of the mujtahids is guilty of sin (*ithm*), that is to say, of disobedience to the law? Second: must we not say, with regard to these two mujtahids, that one of them must be mistaken? The distinctness of these two questions from each other implies a distinction between sin and error. On both of the two questions, the Muslim jurists are divided. A common view—the one Āmidī himself espouses—is that when mujtahids propound conflicting rules of law with respect to one and the same case (or case-type) they are all above sin but not above error. Mutual toleration, according to this view, arises out of the fact that there is no infallible way to determine which of the conflicting rules is the correct one: that is known to God alone, at least until the Day of Judgment, when, according to one prophetic saying, God will reward the mujtahid whose rule is the correct one with a double reward and the mujtahid whose rule is incorrect with a single reward. In the absence of an infallible determination of the correct rule, both conflicting rules—along with any others added to them by

other mujtahids—become authoritative in the special sense noted in an earlier chapter.¹²

Before dealing with the issue of whether in the event of a conflict of opinion regarding the law all mujtahids are above sin or above error, Āmidī deals with a couple of interrelated preliminary issues whose bearing on jurisprudence is rather indirect, which will therefore be considered here only briefly.¹³ The controversies over these issues appear to have arisen out of a reaction to a position taken by two Muʿtazilī jurisprudents/theologians, Jāhiz and ʿUbayd Allāh al-ʿAnbarī. They held that anyone who disagrees with the basic tenets of the religion of Islam on the basis of an honest intellectual *ijtihād*, refusing to become a Muslim, is exonerated (*maʿdhūr*) on the Day of Judgment: his decision not to be a Muslim is thus not a sin.¹⁴ The situation is altogether different in the case of the one who stubbornly and without serious intellectual engagement resists the claims of Islam: he is a sinner and will be culpable on the Day of Judgment. To this way of thinking ʿAnbarī added a further point: in the realm of intelligible matters—matters subject to rational inquiry—all genuine mujtahids, those who put forth the amount of intellectual endeavor that is requisite of true *ijtihād*, must, in the case of conflicting opinions, be counted as above error.

It may be noted immediately that the term *mujtahid* is here being used in a manner that is not typical in the jurisprudential literature: it is used of the one engaged in serious *rational* inquiry. In this usage all who put forth the requisite amount of intellectual effort in undertaking such inquiry are mujtahids, whether they are Muslims or not. The point of view taken by Jāhiz and ʿAnbarī is remarkably latitudinarian, although the point added by ʿAnbarī makes him even more latitudinarian than Jāhiz.

We must bear in mind that Islamic speculative theology, in both its Muʿtazilī and Ashʿarī expressions, is a type of natural theology. This is a point much emphasized in chapter 1 of Part I. It is, according to this theology, our reason that leads us to an acceptance of the existence of God and of the prophethood of Muhammad: these are not *a priori* givens. Since we reach these verities only as a result of some degree of intellectual endeavor, the very acceptance of the truth claims of Islam is the result of a type of *ijtihād*. I noted above that medieval Muslim thought tended to play down the effort entailed in attaining knowledge of basic verities: it does not normally subsume this effort under the heading of *ijtihād*. Apparently, some thinkers did, however; and it appears that certain ones, such as Jāhiz and ʿAnbarī, regarded the amount of intellectual endeavor that leads one to choose to adhere to a particular religion as considerable. This being the case, they were willing to consider any person who has seriously pondered the claims of the religion of

Islam to the best of his ability (recall here the definition of *ijtihād*!) and elected not to become a Muslim as exonerated on the Day of Judgment. ‘Anbarī went further: such a person is without error. Jāhiz was apparently not willing to go so far as to relativize truth itself. Exoneration could flow from divine forbearance. For ‘Anbarī, this exoneration implied a freedom from error.

Since the term *mujtahid* is, in jurisprudence, applied to persons distinguished from the rest of society as possessing special qualifications, one wonders whether Jāhiz and ‘Anbarī had in mind the same thing. Could they have been referring to the great minds of non-Muslim religious traditions (one thinks immediately of John of Damascus, who engaged in dialogue with Muslims) and suggesting that by virtue of the seriousness of their intellectual endeavors they are above sin in their rejection of the claims of Islam and perhaps even above error? Are the masses of their co-religionists, the commoners of the non-Muslim communities, also above sin and perhaps above error in following the teachings of these masters? The reference to the one who stubbornly resists the claims of Islam (*al-mu‘ānid*) seems to pertain only to those who feel the pull of the truth of Islam but nonetheless resist. The commoners presumably would not necessarily fit into this category.

The position of the great majority (*jumhūr*) of Muslims, Āmidī notes, is that one who rejects the basic verities of Islam is not above sin and that in the realm of intelligible matters (the realm with which theological debate is concerned) all who engage in rational inquiry to the best of their ability are not, regardless of results, above error.¹⁵ This, it should be noted, is a majority position, not an Ijmā‘ic consensus. On Āmidī’s own principles, a majority position carries no authority in and of itself. We are thus left with the suggestion that, while Āmidī disagrees with Jāhiz and ‘Anbarī, he does not discount their way of thinking and is willing to tolerate it as an acceptable point of view within the allowable *ikhtilāf* (variation) of the Muslim community. (Mu‘tazilī jurisprudents and theologians are, let us recall, frequently mentioned throughout the theological and jurisprudential literature of Islam.)

Much more pertinent to Islamic jurisprudence as such are the issues of whether Muslim jurisprudents, engaging in *ijtihād* related specifically to questions of law, are, on the one hand, above sin and, on the other, above error. The majority view on the first issue,¹⁶ we have noted, is that the mujtahids are above sin. The dissenters include Bishr al-Marīsī, Ibn ‘Ulayya, Abū Bakr al-Asamm, and “the repudiators of analogy” (*nufāt al-qiyās*) such as the Zāhirīs and Twelver Shī‘īs (*imāmīya*). For them there was not a single issue in law for which there was not a fully determinable resolution, one having a clear-cut basis. The distinction between sin and error was for them specious.

One who erred was a sinner (*āthim*), though not an unbeliever (*kāfir*) or profligate (*fāsiq*).

Āmidī's appeal, in support of the majority point of view, is to the Ijmā' of the Companions of the Prophet as attested by the absence of recorded objection on the part of any Companions to the agreement to disagree that occurred so often among the Companions. Āmidī argues that there are so many such incidents of this that their essential content—the fact that the Companions disagreed and tolerated each other's conflicting opinions—may be regarded as certain (*mutawātir*).¹⁷ From the absence of recorded objection we infer consent to this toleration through silence on the part of the entire generation of Companions.

It is the issue of whether mujtahids holding conflicting opinions are all above error that aroused the greater amount of controversy within the mainstream of Sunni jurisprudence. This is evident from the much greater amount of space that Āmidī devotes to this issue:¹⁸ nineteen pages (1914 Cairo edition) as against two devoted to the issue considered above. The controversy over it includes a wider spectrum of parties, including those who held that error was tantamount to sin. The latter are included because they are necessarily among those who maintain that mujtahids holding conflicting opinions *cannot* all be above error. The controversy thus overlaps to some extent with the previous one. Furthermore, on this controversy no majority position is evident from Āmidī's account. The issue truly divided Muslim thinking.

That thinking seems, in the final analysis, to have encompassed three broad possibilities, the first two of which entailed an equation between error and sin. In the event of disagreement among mujtahids, either all mujtahids were above error and therefore above sin, or at least some (all but one) and possibly all mujtahids were involved in error and therefore in sin, or at least some (all but one) and possibly all were involved in error but were *not* therefore involved in sin. The last of these possibilities—the one predicated upon a distinction between error and sin—is the one espoused by Āmidī himself. He mentions two other supporters: Ibn Fūrak and Abū Ishāq al-Isfarā'īnī. The exponents of the second possibility have been previously mentioned: Abū Bakr al-Asamm, Ibn 'Ulayya, and Bishr al-Marisi. The exponents of the first possibility are, in Āmidī's account, Bāqillānī, Abū'l-Hudhayl, Jubbā'ī, and Abū Hāshim (the first an Ash'arī, the last three Mu'tazilis).

Āmidī notes that the debate presupposed either that the particular case on which the mujtahids disagree was not covered by an unambiguous textual pronouncement of undoubted authenticity (*nass*) or that it was so covered but the mujtahids deliberating upon the case had, despite doing their utmost to explore the entire body of texts, not discovered the relevant pronouncement.

Any mujtahid who failed to discover the relevant pronouncement because of a failure to meet the “total expenditure of effort” (*istifrāgh al-waṣʿ*) test (mentioned in Āmidī’s definition of *ijtihād*) was definitely involved in error (as well as in sin).

Before presenting his own argument for his chosen position, Āmidī reviews alternative arguments, noting their inadequacies. These include arguments from the Qur’ān, the Sunna, and the Ijmāʿ as well as a rather elaborate rational argument consisting of six distinct points. I shall not take up my reader’s time with these arguments. What is striking about Āmidī’s own argument is its brevity: when mujtahids disagree among themselves, we must presume that their opinions are *not* all correct in the absence of proof to the contrary. Āmidī refers in connection with this argument to the principle that a thing is presumed to remain in its original condition until there is proof of a change.¹⁹ The original condition of a mujtahid cannot be a correct understanding of the law, since this understanding is not innate in him. In the case of disagreement, we certainly have no proof that induces us to presume a change from lack of understanding to correct understanding. Āmidī seems to be implying also that even where we have the opinion of a single mujtahid, without agreement or disagreement of other mujtahids, we must presume an absence of correct understanding. Only one thing constitutes positive proof of the correctness of understanding of an individual mujtahid and that is agreement on the part of all other contemporary mujtahids, in short, an Ijmāʿic consensus. Āmidī seems to be saying that in the absence of proof of correctness we must presume incorrectness. Incorrectness does not, we must remember, deprive an opinion of its authority relative to commoners.

One can well appreciate the dilemma that the entire controversy poses. How can an opinion be authoritative and yet incorrect? How can a rule of law propounded by a mujtahid be regarded as genuine law when it does not represent the original intent of the Divine Legislator? One can readily understand why some jurists sought to accord correctness to all rules of law propounded by mujtahids. It no doubt seemed a contradiction in terms to speak of such rules as valid and enforceable and yet as incorrect. But to accord correctness to conflicting rules is to relativize the law. This was a consequence that had to be borne, and therefore those jurists who accorded correctness to conflicting rules frankly affirmed that the divine law is contingent upon the opinion of the mujtahid (*tābiʿ li-zann al-mujtahid*). In other words, the law for each mujtahid (and for those who follow his teaching) is whatever his own *ijtihād* leads him to (*hukmu ʾllāhi fī haqqi kulli mujtahidin mā addā ilayhi ijtiḥāduh*). Or to state the same point still another way: the law is in itself indeterminate (*ghayr mutaʿayyan*) and waits upon the *ijtihād* of human

scholars to attain determinacy. There is, for any given case, *no one rule that exclusively represents the divine law*.

Though this way of thinking had at least one great Ash'ari divine among its supporters, it could clearly be disturbing to anyone who built his entire jurisprudence around the notion of a single correct rule as the object of the whole enterprise of *ijtihād*. Was not the divine law a desideratum, an ideal, which the mujtahid sought to approximate as closely as possible through his formulations? If the law did not reside in an original intent of the Legislator, what was the mujtahid striving for in the first place? Was there an original intent that he should seek to understand, but which, in case he failed to achieve this understanding, did not much matter in any case, not even as a standard of correctness or as a measure of the success of his *ijtihād*? How could such an original intent be a genuine object of his search? And should he discover later in life, or should some other mujtahid point out to him, an indicator that he had somehow missed—despite the sincerity and exhaustiveness of his original *ijtihād*—that was stronger in probative value than any he had encountered before and contradicted his original opinion, what point was there in changing his opinion? Had he not discovered the true law of God in his original search? And if the law of God was identical with whatever opinion a mujtahid happened to come to, what point was there in speaking of different indicators as having different degrees of probative strength, in speaking of certain indicators as stronger (*aqwā*) than others? Probative of what?

Such considerations as these lie behind the insistence on the part of Āmidī and others that the opinion of a mujtahid need not be correct in order to have the force of positive law. Or, to use the key Arabic terms, the *fiqh* of any one master or school need not be coterminous with the ideal Shari'ah, considered as an eternal reality residing within the divine speech, in order to be authoritative. Authority, let us remember, operates at different levels: at the level of the indicators themselves, the texts and the methodologies used to derive law from the texts, and at the level of application of rules to concrete situations. The authority of the indicators—of the Qur'ān, the Sunna, the Ijmā', and, yes, even analogy—is absolute. In regard to analogy it can be said that the entire complex dialectic that was developed as a crucible for the testing of analogy presupposed that, no matter how much mujtahids may differ, there was for any particular case not covered in the texts one and only one valid analogy. The emergence of conflicting analogies was due to the fallibility of the mujtahids, as was the emergence of conflicts between textual indicators. Conflict did not exist in the realm of ideal law. But it was not the ideal law, but only the positive law worked out by mujtahids, that was available for application to particular cases and as a guide for daily living. Therefore, in addition

to the authority that the indicators enjoyed over the minds of the mujtahids, there had to be another authority—that of the mujtahids themselves—that declared what was to be actually applied.

For Āmidī, then, the notion of correctness made sense only as *exegetical* correctness. In a sense of the term that does not enter into Āmidī's thinking, an opinion of a mujtahid could be exegetically incorrect but legally correct—or is a better term “appropriate”? The mass of Muslims down through the centuries have referred, in their search for a law by which to live and decide cases on a day-to-day basis, not to the Qurʾān or Sunna or any such indicator of the law, but to the *fiqh* of the great masters. And this *fiqh*, one could say, has in a practical way been correct for all. But Āmidī is more interested in sound theory than in practical realism; and in purely theoretical terms only exegetical correctness can matter for him. The original intent of the Legislator alone can constitute the ideal law of God, whatever else may be said with reference to the positive law by which men actually live. That original intent must always be regarded as a standard by which the positive law is constantly measured.

Having stated his central argument for his own position, Āmidī then turns to the arguments of the opposition. He seems to regard these arguments as presupposing the validity of the presumptive stasis principle that he himself employs: its main point is that we *do* have positive evidence that requires us to set aside the presumption of stasis: this evidence consists of Qurʾānic, Sunnaic, and Ijmāʿic indicators as well as purely rational arguments. When we compare the arguments of the opposition with those arguments for his own position that he regards as inadequate, we see immediately that the controversy was in some jurisprudential circles largely a dispute over Qurʾānic, Sunnaic, and Ijmāʿic indicators, each side employing indicators from all three categories to support its position and criticizing the opposing side's use of these indicators. By rejecting the use of such arguments in support of the position he adopts while at the same time rejecting the use of such arguments by the opposing side, Āmidī is showing us that he does not believe that the issue can be resolved on the basis of divine revelation: by employing the principle of presumptive stasis, he also shows that it need not be resolved on the basis of divine revelation. Apart from this principle, however, there are no rational principles that resolve the issue.

The first argument of the opposition noted by Āmidī employs Qurʾān 21:78–79: “And David and Solomon, when they gave judgment concerning the field that some people's sheep had entered by night to graze in . . . We made Solomon to understand [the case]; and to each of them We gave judgment and knowledge.” The final statement in this passage could not be true if one of the two men (presumably David) was in error; therefore, both Solomon

and David must be considered to have been above error even though their judgments differed. Āmidī's reply: all this final statement shows is that David and Solomon possessed judgment and knowledge that God had given them. This judgment and knowledge did not, in the case of David, necessarily bear upon the case mentioned in this passage. The judgment and knowledge mentioned could very well consist merely of judgment and knowledge relating to the employment of indicators of the law and the methodology of derivation of law from texts, in short, the judgment and knowledge that qualifies people for *ijtihād*.

The second argument employs the Prophet's saying, "My Companions are like stars in that by following their example you receive guidance." This statement makes the opinions of the Companions a source of guidance even if they differ from one another. If any one Companion who expressed his opinion on a particular case was in error, he could not be described as "like a star" in the sense intended by the Prophet. Āmidī's reply: while the Prophet's saying clearly embraces all the Companions, it cannot be taken to mean that we are to follow their example in all matters. This same verse, we should recall, was used by some Muslim jurists to support the universal trustworthiness of all Companions as transmitters of information about the Prophet.²⁰ We have also noted that it was used by certain jurists to support the notion that the opinion (*madhhab*) of an individual Companion is an indicator in its own right.²¹ This notion seems to be clearly allied in some way to the notion that the opinion of each individual mujtahid involved in a disagreement over a case is correct, except that it restricts this inerrancy to the generation of Companions.

The third argument appeals to the *Ijmā'*. The Companions, it is claimed, unanimously agreed among themselves to allow differences of opinion to exist and to tolerate such differences. Moreover, we know that the early caliphs used to appoint judges to settle disputes, even though they knew the judges might differ among themselves, and we have no record that any Companion objected to this practice. Āmidī's reply: the reason why the Companions tolerated disagreement among themselves is that there was no infallible way, in the event of disagreement, to determine which opinion was correct and which incorrect. So long as the errant Companion could not be identified, each Companion was obliged to follow his own opinion. Each Companion could rightfully censure the opinion of another Companion only if he knew with absolute certainty that the opinion was incorrect.

The fourth argument falls under the heading of rational arguments. It explores the unacceptable consequences that follow from the notion that, in the event of disagreement, the opinion of only one mujtahid can be the

right one and that the law is thus fully determinate with respect to every case in advance of the deliberations of mujtahids. An unacceptable consequence (*muhāl*) is, as has been frequently noted in this book, a consequence that reason cannot accept because it contradicts a definite truth. The rational argument thus, as is typical in the *Ihkām*, assumes the form of a *reductio ad absurdum*.

The unacceptable consequences alleged to follow from the notion that in the event of disagreement among mujtahids only one opinion can be the correct one are as follows:

1. God would necessarily have provided indicators strong enough to eliminate obscurity (*ishkāl*) and to enable all mujtahids to arrive at the correct understanding of his law, for it is known to be the custom of the Legislator to enable people to have a firm knowledge of what he requires of them (three Qur'ānic passages are quoted here). But God has not provided such indicators; therefore, we must, given this custom of the Legislator, consider the opinions of all mujtahids involved in a disagreement to be correct. Āmidī's reply: one can say that, in regard to many questions of law, it is the custom of the Legislator to enable people, not to acquire a firm knowledge, but to engage in a search for considered opinion for the sake of the greater award that is consonant with the more difficult task.

2. It would not be possible for a commoner to adhere to the teaching of a particular mujtahid without determining beforehand which mujtahid is the more learned and therefore the more likely to propound a correct opinion. Āmidī's reply: the commoner is allowed to choose whichever mujtahid he wishes as an authoritative master simply because he lacks the skills necessary to distinguish the more learned from the less learned. If he possessed these skills, he would himself be a mujtahid.

3. Every opinion that was in conflict with the correct opinion would necessarily be decisively refuted (*nuqida*), since only a correct opinion can withstand the rigors of the dialectic of mujtahids. Since in actual disagreements mujtahids do not decisively refute each other's opinions, it must be the case that they all are correct. Āmidī's reply: the reason why the mujtahids do not decisively refute each other's opinions is that they are unable to determine with certainty which is the correct opinion.

4. Each mujtahid would not be duty-bound to perform acts that his opinion rendered obligatory, for God does not command error. Therefore, since we know that each mujtahid is thus duty-bound, it must be the case that the opinion of each is correct. Āmidī's reply: the principle that each mujtahid is duty-bound to follow the dictates of his own opinion applies to situations in which there is a clearly stated rule of law in a text that the mujtahid has, despite

putting forth maximal effort (as required of mujtahids), managed to miss. Here we clearly have a single determinate rule for a case, while the mujtahid remains justified in following an opinion that is in conflict with that rule.

5. The weighing of indicators, which is a central task in *ijtihād*, would become impossible, for this is a weighing of indicators that are equally probative in and of themselves but to one of which a preponderance is given by taking into consideration some additional factor. The point of the argument seems to be that if all indicators have equal probative value in and of themselves and if all mujtahids base their opinions on indicators, then the opinions of all must be correct. Āmidī's reply: the weighing of indicators does not entail consideration of an additional factor. The so-called additional factor is, rather, part of one of the indicators. Weighing of indicators entails treating the preponderant indicator as probative and as nullifying the probative force of the nonpreponderant indicator. Āmidī obviously regards the opponents' view of the weighing of indicators as unsophisticated.

6. There would be hardship in the search for the divine law, and hardship is ruled out by Qur'ān 22:78 ("And has not laid upon you in religion any hardship [*haraj*]") and 2:185 ("God desires ease for you, and desires not hardship for you"). Āmidī's reply: hardship arises in the search for the law only if the mujtahids are under obligation to achieve absolute certainty. However, if genuine rectitude can consist in following fallible opinion (as is the case), then the hardship disappears. Furthermore, if hardship arises from a failure to attain full certainty of the correctness of an opinion, then all cases that are not directly covered in authoritative texts create a situation of hardship for mujtahids. Much better, then, to let fallible opinion prevail and eliminate the hardship.

7. A mujtahid who was in error could never be assured of forgiveness for neglecting investigation of indicators that, despite his maximal effort to cover all relevant indicators, he had somehow managed to miss, for whenever he brought his *ijtihād* to an end he would have to contemplate the possibility that there was further investigation of which he was unaware that might lead to a certain knowledge of the truth; and neglect of investigation that leads to the truth is not forgiven. But to say that a mujtahid is not forgiven for not having investigated indicators of which he was not aware is to contradict an Ijmā'ic consensus to the effect that a mujtahid does receive such forgiveness together with an eternal reward for his effort. Āmidī's reply: this argument does not recognize that the point at which a mujtahid is aware that he has put forth maximal effort and is unaware of further investigation that he might undertake is decisive, as we do. If one treats this point as decisive, then one has a basis for affirming that the mujtahid is assured of forgiveness for failure to carry on further investigation.

It should be noted, before we continue, that the toleration of differences of opinion among mujtahids that the majority of Muslim jurists affirmed—whether because they believed the opinions of all mujtahids to be correct or because they believed the opinions, whether correct or not, to be authoritative—did not exclude criticism by mujtahids of each other's opinions. Criticism was an essential part of the dialectic within which they formed and put to the test their opinions. What toleration disallowed, rather, was censuring and condemnation. No matter how strenuously mujtahids might disagree and no matter how convinced each might be that his opinion is more viable than the opposing opinions (a necessary mental posture in all dialectic), they could never, so long as each had not reached the point of absolute certainty, reproach each other or accuse each other of innovation and heresy.

Turning now to the tenth controversy (I shall return to the intervening controversies presently),²² we come to an issue that is related to that just discussed while remaining distinct from it. Is it possible for it to be said (apparently by the Legislator) to a mujtahid, "You make the decision [on such-and-such case]; for whatever decision you make is a correct decision" (*ihkam fa-innaka lā tahkum illā bi'l-sawāb*)? Making a decision entails, of course, formulating a rule that will govern the case at hand. As we proceed further into Āmidī's account of the controversy over this question, we soon discover the full import of the question. It is whether one can speak of a mujtahid as having been delegated (*fuwwida*) by God to formulate rules of law according to his own free choices (*takhyir*) and quite apart from any consideration of indicators of the law or of rational determinations of the law of the sort that the Mu'tazilis accepted. The controversy seems to pertain only to novel cases perceived as insoluble within the framework of the normal indicators of the law. For all Ash'arīs, including Āmidī, rational determinations of the law are, of course, out of the question, since the unaided intellect is incompetent to discern the law on its own.

This controversy seems to be related to the controversy, noted earlier, as to whether an Ijmā'ic consensus on a rule of law can be established apart from indicators.²³ That minority of jurists who allowed the Ijmā' to develop apart from indicators may perhaps also have been among the jurists who, on the issue before us, affirm that an individual mujtahid may in some cases formulate the law entirely without indicators on the basis of a delegation of authority to do so that he has received from God. Āmidī is careful to distinguish between the question of whether such delegation is possible and the question of whether it has in fact taken place. The majority of jurists (*al-bāqūn*) take a negative position on both questions. Āmidī

mentions only one jurispudent as having affirmed that such delegation is possible, Mūsā ibn ʿamran, and says nothing about his thinking on the question of whether such delegation has actually taken place. One gathers that no jurispudent was so bold as to suggest evidence that this delegation had taken place. Jubbāʾī is described as having held this delegation to have been possible (but not necessarily actual) in the case of the Prophet, being considered here in his role as mujtahid, not in his role as conveyer of revelation.

Since this controversy seems not to have engaged a wide body of jurispudents, I shall move on to the eleventh controversy.²⁴ Here the issue pertains, again, to the *ijtihād* of the Prophet. Was it possible for an opinion that the Prophet arrived at through *ijtihād* to be in error? It may be recalled that an earlier discussion of the Prophet's "infallibility" focused upon disobedience as the thing against which the Prophet enjoyed immunity (*ʿisma*) and that discussions of communal "infallibility" (through the *Ijmāʿ*) focused upon error.²⁵ Now we are presented with error in prophetic *ijtihād* as an issue. The question whether the Prophet was above sin in his *ijtihād* was presumably not raised and could not be raised, even though the same question could be raised in regard to other Muslims. Those who allowed sin (or disobedience) in the case of the Prophet restricted it to trivial matters: it certainly could not be allowed in the realm of prophetic *ijtihād*. Erroneous *ijtihād*, on the other hand, insofar as it was not equated with sin, could be attributed to the Prophet without suggesting any culpability. The question was: was it *possible* for the Prophet to err in his *ijtihād*? The question of whether there is evidence that error actually occurred in the Prophet's *ijtihād* does not seem to have been raised.

Āmidī takes the position of the majority of his own school (Shāfiʿī), according to which error in prophetic *ijtihād* was possible. He also attributes this position to the Hanbalis, the *hadīth* specialists, and a group of Muʿtazilis led by Jubbāʾī. On the opposing side of the controversy are a Shāfiʿī minority. The issue thus appears to have been debated mainly within Shāfiʿī circles. Āmidī cites several Qurʾānic and Sunnaic passages in support of the majority position. Since this controversy has little bearing on the main concern of Islamic theoretical jurisprudence, namely, the formulation of the law, I shall not detain my reader with further detail.

Five *ijtihād*-related controversies remain to be considered, the sixth through the ninth and the twelfth. The sixth focuses on a procedure followed in the weighing of conflicting indicators that stood in contrast to the usual *tarjih* (determining preponderance) and was called *taʿādul*: treating conflicting indicators as equal in probative strength.²⁶ Some jurispudents, including Bāqillānī, Jubbāʾī, Abū Hāshim, and most *fiqh* specialists, accepted *taʿādul*,

while others—Āmidī mentions Ahmad ibn Hanbal and Karkhī—rejected it. Āmidī counts himself among those who accept it, arguing as follows. If it is impossible for two conflicting indicators to have equal weight, this must be so either because it is intrinsically impossible or because of some positive proof of its impossibility. It is clearly not intrinsically impossible because no absurdity follows from it; since there is no positive proof of its impossibility we must presume it to be possible.

Āmidī turns to the arguments of those who reject *taʿādul*, of which two are recorded.

1. If two indicators are to be given equal weight, then the mujtahid bases his formulation of the law on both of them, or he bases it on one of them, or he bases it on neither of them. The first is impossible because it entails a conjunction of contraries. The second is impossible for the following reasons. Either the mujtahid bases his opinion on one of the two indicators for reasons intrinsic to the indicator or he does so entirely at his own discretion. The first of these two courses is impossible because, if the indicators are truly equal in probative weight, there can be nothing intrinsic to the indicator itself that induces the mujtahid to base his opinion on it. The second course is impossible for three reasons. First, there is an Ijmāʿic consensus to the effect that questions of the law are not left to the free choice of mujtahids. Second, for a mujtahid to be given free choice would amount to license to do or not to do the thing in question; and this would be tantamount to adhering to an indicator of neutrality, which is not what is under discussion. Third, this course of action would imply that a judge may give two disputing litigants freedom of choice or that a mufti may give a commoner freedom to choose between a rule and its opposite, or that one rule may be applied in the case of Zayd and its opposite in the case of ʿAmr, or that one rule may be propounded on one day and its opposite on the next day—all of which is impossible. As for the mujtahid's basing his opinion on neither of the two indicators, this is impossible because it would render the two indicators irrelevant and thus implicate the Legislator in meaningless superfluity.

Āmidī's reply: this argument fails to consider that the mujtahid may indeed base his opinion on both indicators in the sense that they function together to indicate either that the mujtahid should refrain from judgment or that he is free to choose between the two indicators. However, even if we reject this co-functioning of the two indicators, why cannot it be possible for the mujtahid to base his opinion on one of the two indicators simply at his own discretion? The Ijmāʿic consensus cited applies only to situations in which it is possible to determine the preponderance of one indicator. *Taʿādul* operates in situations where this is not possible. In such situations there is nothing farfetched

about the notion that the mujtahid has freedom of choice. It is similar to the option-bound obligation (*al-wājib al-mukhayyar*) in which a person is given a choice between different ways of discharging a basic duty such as expiation.²⁷

As for the notion that license is given to the mujtahid, this is a problem only if we are dealing with unqualified freedom of choice between doing something and not doing it. However, here we are dealing with a choice qualified by an intention to base a viable legal opinion upon an indicator. As for the alleged absurdities that follow from the mujtahid's choice of one of the two conflicting indicators, the first two mentioned do not arise since the judge and mufti are the ones making a choice; they do not delegate the power of choice to the litigants or consulting commoners. As for the rest, there is nothing to prevent a judge from applying one rule in the case of Zayd and its opposite in the case of 'Amr, or from applying one rule today and another tomorrow, since his *ijtihād* may produce different results on different occasions or in different cases. But even if we rule out the use of both indicators and the use of one but not the other, why cannot the third option—the mujtahid's use of neither indicator—be possible? Surely God may provide indicators that have no bearing on a known case for reasons hidden to us; or the reason could be that God wills to prevent the mujtahid from easily reaching certainty about the law in order to increase the scope of the struggle for which the mujtahid is rewarded.

2. The rule of divine law that governs any particular case is determinate and singular for reasons previously given. Now, if two conflicting indicators are counted as equal so that a choice is given to the mujtahid, then this implies that the Legislator is causing a mujtahid to go astray or bringing about confusion in the search for his law, and the Legislator is known to be above such things. Āmidī's reply: these things can be said only on the assumption that the mujtahid is duty-bound to arrive at a correct opinion concerning the law of God (*law kāna mukallafan bi-isābati mā huwa 'l-hukmu 'inda 'llāh*). But we do not make this assumption. Rather, the mujtahid is duty-bound only to follow the dictates of the opinion that he arrives at through *ijtihād*.

What Āmidī places under the heading of the seventh controversy is more of an explication-through-disjunction (*taqṣīm*) than an account of a controversy,²⁸ although controversy appears at certain points in the explication. I shall here concentrate on the explication as such. Its object is the body of statements attributed to great mujtahids of the past, especially the founders of the major historic schools of law. The concept of a relative authority possessed by mujtahids over those who have chosen to be their followers—which, as we have noted, is distinct from the absolute authority accorded the indicators of the law—naturally produced among Muslim jurisprudents an

interest in the process of transmission of statements of these mujtahids. These statements constitute a kind of text, not the sort of text mujtahids work with but the sort of text their followers work with. Since it is the whole purpose of a mujtahid to articulate the law as fully as possible, these texts do not raise the difficult hermeneutical problems that the foundational texts used by mujtahids raise, although they may be presumed to be somewhat problematic at times. When a follower of a mujtahid confronts a case the mujtahid has not considered, he has no recourse but to consult the mujtahid directly or, if the mujtahid is long since deceased, some member of his school who possesses the limited degree of *ijtihād* that allows him to propound rules for novel cases so long as they do not conflict with any basic doctrine of the school.

To some extent the considerations that apply to the transmission of the Qur'ānic, Sunnaic, and Ijmā'ic texts apply to these *fiqh* (in this study treated as the positive law of Islam) texts as well. They are, for example, largely oral texts, although there is a fair amount of written material as well, especially in the case of Shāfi'ī. However, for obvious reasons, their transmission and authenticity is not given nearly the same degree of attention as that of the foundational texts. In the section presently under consideration, Āmidī focuses upon the problem of contradictory statements attributed to a great mujtahid. Any reader of the *Ihkām* or a similar work in Islamic theoretical jurisprudence encounters frequent instances where the name of a great mujtahid is cited by opposing parties in a controversy. All four founders of the major historical schools are cited on occasion in this manner, Ahmad ibn Hanbal perhaps most frequently. Āmidī simply records, as a matter of duty, what he knows to be transmitted in the way of contradictory sayings. But these citations occur in the context of discussions of strictly jurisprudential issues. In the realm of positive law, one perhaps encounters an even greater variation of attributions to the great mujtahids.

Āmidī now turns to the question of what is to be done in the presence of such contradictory statements. Is it possible for a mujtahid to espouse two opposing opinions regarding a particular case, implying that his followers may freely choose between these opinions? In attempting to answer this question Āmidī develops the following disjunctive schema. Either the two contradictory statements are both found in written texts, or they are both transmitted orally, or one is found in a written text and the other is transmitted orally. In order not to detain my reader, I shall present here only that part of Āmidī's scheme that applies to the statements as found in written texts. Either the two statements were written at two different times, or they were written at one and the same time. If the former is the case, then either the date of writing of the two statements is known, in which case the later statement supersedes

the earlier one, or it is not known. If the date of writing is not known, then one must be regarded as superseding the other, and since the identity of the superseding statement is not known, the follower must suspend judgment as to which statement is authoritative until evidence of the chronological order of the statements emerges. The treatment of the two statements up to this point, as Āmidī notes, is comparable to the process of abrogation relative to Qur'ānic and Sunnaic texts. If both statements were written at the same time, then either the mujtahid himself will have indicated that one takes precedence over the other, in which case that statement is treated as authoritative, or he will have not indicated this. If he has not (and Āmidī mentions that we have contradictory statements of this sort from his own master, Shāfi'ī, on seventeen different legal issues), then two major possibilities must be considered: either the mujtahid held two mutually contradictory opinions on one and the same case, which is impossible, or he meant to give a choice to his followers. In this case the two statements amount to a single statement.

Choice (*takhyīr*), as is well known, is an important consideration in the development of a school of law. The doctrine of a school is never monolithic and inflexible. The original master himself allows choices. His immediate followers begin to fill in gaps through a limited *ijtihād*, and those who follow them in succeeding generations carry on this work as the scope of *ijtihād* becomes ever more restricted. There is no suggestion in the *Ihkām*, however, that the need for *ijtihād* within a school comes to an end at some point; nor is there any indication that a mujtahid, unbound by any school, may not arise at any time.

The eighth controversy resembles the seventh in that it provides space in the *Ihkām* for an explication-through-disjunction,²⁹ this one related to a decision made by a judge. This is the only place in the entire *Ihkām* where the judicial decision is itself the object of special attention. The question that Āmidī's schema addresses is whether a judicial decision, once rendered, may subsequently be invalidated. He notes a general agreement among jurists to the effect that a judicial decision may be treated as invalid in two situations: where it contravenes a clear and unambiguous pronouncement found in a text of undoubted authenticity and where it contravenes the judge's own *ijtihād* (assuming, of course, that the judge is a qualified mujtahid). Where the case before the judge is one that can be settled only through *ijtihād* and the judge, being a qualified mujtahid, in fact renders a decision based on his *ijtihād*, the decision can never be invalidated, since the public good is served by its remaining valid; for if it was possible for a judicial decision to be invalidated either by a new *ijtihād* on the part of the judge or by virtue of a decision of some other judge, then it would be possible for the new decision itself

to be invalidated by a subsequent decision and that decision by yet another decision and so on *ad infinitum*. The result would be that the judicial system would be in turmoil, confidence in judges would be undermined, and the public good would suffer.

The decision of a judge must even overrule a decision that a mujtahid makes privately about himself or anyone else. If, for example, a mujtahid is led by his *ijtihād* to the decision that he is permitted to marry a woman without the involvement of the woman's guardian and that decision is confirmed by a judge, and then later the mujtahid, as a result of fresh *ijtihād*, decides that his marriage was illicit, he must still adhere to his original decision since that was supported by a judge.

Where disagreement arises is in respect to a judge who is not a mujtahid and who renders a decision contrary to his chosen school—for example, a Hanafi judge who renders a decision based on Shāfi'i doctrine regarding a case where the two schools are in disagreement. Is such a decision valid or not? The answer, Āmidī notes, depends on the position one takes toward a practice that has in modern times been called *talfiq*, applying doctrine other than that of one's school. Some allow this practice, others do not. Āmidī simply notes the controversy without giving an account of it.

The ninth controversy takes up the issue of whether a mujtahid may deliberately refrain from engaging in *ijtihād* on a case that falls within his competence as a mujtahid and, instead, adhere to the opinion of another mujtahid,³⁰ a practice to which Āmidī, as we discover in a later section of the *Ihkām*,³¹ applies the term *taqlīd*. In other words, can the relative authority that the opinion of a mujtahid has for himself and for those who follow him be effective for a peer of the mujtahid? The reason why a mujtahid competent to formulate a rule for a given case might wish to follow the opinion of another mujtahid is obvious: if another mujtahid has done all the work necessary to achieve a certain result, why not accept the fruits of his labor and spare oneself the toil of a fresh *ijtihād*? On the other hand, reluctance to allow the mujtahid to do this no doubt arose from concern over the consequences: if one accepted this deferential attitude on the part of any mujtahid, there would be nothing to prevent a great many mujtahids from deferring to the opinion of one of their number, thus thwarting the emergence of diversity and conferring upon the opinion of a single mujtahid greater prestige than any opinion should enjoy.

Āmidī notes that Bāqillānī and most *fiqh* specialists disallowed this deference of a mujtahid toward a peer. But those who allowed it were themselves divided on a number of points. Some allowed the mujtahid to submit only to the opinion of a Companion of the Prophet, while others allowed submission

to the opinion of a Companion or a mujtahid of the following generation. Some allowed the mujtahid to submit only to the opinion of a mujtahid who was more learned, while others allowed him to submit to the opinion of any mujtahid, whether more learned, equally learned, or less learned. Some allowed him to submit to the opinion of another mujtahid only on a matter that concerned him personally: he should not use the opinion of another mujtahid as a basis for legal advice (*fatwā*) to others. Others allowed him to use the opinion either for personal reasons or as a basis for legal advice.

The notion of submission to the opinion of another mujtahid who was more learned (*a'lam*) calls for comment, for we have here what no doubt constituted the most common justification for *taqlid*. This notion presupposes that, among persons qualified for *ijtihād*, there could be different degrees of learnedness. Thus mujtahids could differ among themselves in two ways: in respect to the scope of their competence (unrestricted, restricted to a particular field of law or school of law, etc.), and in respect to the degree of their learnedness. The two kinds of difference must not be confused. A mujtahid could not engage in *ijtihād* on a case outside the scope of his competence: in regard to such a case he clearly had no alternative but to defer to the opinion of a mujtahid who was qualified to engage in *ijtihād* on that case. The present controversy is concerned with situations in which two mujtahids are both qualified to engage in *ijtihād* on a certain case but one is more learned than the other. Both, it should be noted, are equally competent to engage in *ijtihād*. One has, let us say, acquired the minimal amount of learning that is required; the other has acquired a much greater amount of learning. No matter how vast the learning of a particular mujtahid, however, his opinion still remains opinion. It does not acquire the absolute authority reserved for the indicators of the law. Greater learning may, of course, be supposed to produce more reliable results. But the results still may not be placed above the level of opinion.

One can well imagine that behind the notion that a mujtahid could submit only to the opinion of a Companion of the Prophet or members of the following generation lay a conviction that mujtahids of those early generations possessed a degree of learning unequalled in later generations. Why should not a mujtahid forego *ijtihād* of his own if he believed that it could not equal in scholarly depth the *ijtihād* of a mujtahid of those early generations? Why not restrict his own *ijtihād* to cases on which an *ijtihād* of those early generations was unknown to him? One could also apply this same deference to the period of the founders of the schools of law.

Āmidī adopts the position that a mujtahid may not submit to the opinion of another mujtahid, whether that mujtahid be more learned or not. If a scholar possesses to a minimal degree the qualifications for *ijtihād*, he is as

much a mujtahid as any other (including one more learned) and must engage in *ijtihād* on all cases in which the indicators of the law admit of *ijtihād*. This view has awesome implications for the one who sets about to become a mujtahid, especially one of unrestricted competence. If he fulfills to his own satisfaction the minimal qualifications for *ijtihād*, he takes upon himself the duty of working out the law for himself in all those areas that fall within the scope of his *ijtihād*; and if he has satisfied the minimal qualifications for unrestricted *ijtihād*, he has taken upon himself the duty of working out the entire law for himself: he may follow no school of law.

Āmidī argues as follows for his position. The notion that a mujtahid is permitted to submit to the opinion of another mujtahid amounts to a rule of law in its own right, and it must therefore be based on some indicator. If such an indicator cannot be found, then it must be presumed that such an indicator does not exist. The burden of proof lies, in other words, with those who affirm this rule. We cannot infer from the fact that a nonmujtahid is permitted to submit to an opinion of a mujtahid that the same is true of a mujtahid who wishes to spare himself the toil of *ijtihād* or who feels that another mujtahid is more learned.

This argument requires for its validity that Āmidī be able to demonstrate that all indicators cited by those who allow a mujtahid to submit to the opinion of another mujtahid are without probative value in this controversy.

Two such indicators are Qur'ānic. Qur'ān 16:43 ("Question the people of the Remembrance, if it should be that you do not know") commands the hearer to question. This command, it is argued, presupposes at the very least that one is permitted to follow the opinion of the one questioned. Now the verse does not have in mind only those who know nothing at all; rather, it has in mind those who know nothing in regard to a particular case: this includes both the commoners and mujtahids who have not engaged in *ijtihād* on the particular case. Both are ignorant with respect to the case at hand; and both should question those who have knowledge. This implies, for the mujtahid, that he should not engage in *ijtihād* of his own. Āmidī's reply: the phrase "people of the Remembrance" (*ahl al-dhikr*) is synonymous with "the learned" (*ahl al-ilm*), and "the learned" applies to persons by virtue of their possessing the qualifications necessary for the attainment of knowledge rather than by virtue of their possession of knowledge as such. This is the literal meaning of "the learned," the meaning that the expression must be presumed to have unless there is positive evidence to the contrary.

The second Qur'ānic indicator is 4:59: "Obey God, and obey the Messenger and those in authority among you." "Those in authority," it is argued, are the learned. Āmidī's reply: this verse makes obedience to those in authority

obligatory. Our opponents do not claim that the submission of one mujtahid to the opinion of another is obligatory; rather, they claim that it is permitted. Therefore this Qur'ānic passage is irrelevant.

As for Sunnaic indicators, these include such sayings of the Prophet as "My Companions are like stars in that by following their example you receive guidance," "You are under my Sunna and the Sunna of the Rightly Guided Caliphs after me," and "Imitate those who come after me—Abu Bakr and 'Umar." These show that mujtahids should submit to the opinions of mujtahids of the generation of the Companions of the Prophet. Āmidī's reply: it has been previously demonstrated, in the discussion of whether the doctrine of a Companion of the Prophet constitutes an indicator of the law to which all subsequent mujtahids should defer,³² that these sayings do not prove what the opposition claims.

Two Ijmā'ic indicators are cited. 'Umar referred, when dealing with certain cases, to the opinions of 'Alī and Ma'ādh. 'Abd al-Rahmān ibn 'Awf accepted the caliphate of 'Uthmān on condition that 'Uthmān would defer to the practices of the two previous caliphs. Since there is no record of any objection to either of these two actions, we may presume an Ijmā'ic consensus in support of them. Āmidī's reply: 'Umar did not really submit to the opinions of 'Alī and Ma'ādh; rather, his reference to those opinions was based on his agreement with them on the basis of his own *ijtihad*. And the deference that 'Abd al-Rahmān ibn 'Awf required of 'Uthmān was confined to administrative affairs and did not extend to the realm of legal *ijtihad*.

The opposing side attempts to rest its case upon a principle that Āmidī himself has affirmed throughout the *Ihkām*: within the realm of law, opinion is binding. If the mujtahid who wishes to submit to the opinion of another mujtahid undertook his own *ijtihad*, he would be able to produce nothing more than opinion. If opinion is truly binding and an opinion has already been propounded by a qualified mujtahid, there is no reason for the mujtahid to produce yet another opinion. Āmidī's reply: if a mujtahid submits to the opinion of another mujtahid, he is substituting something for an *ijtihad* of his own. Whenever a substitution occurs, it is because some preferred course of action is impossible, requiring an alternative to take its place. This being the case, we have reason to presume, unless there is an indicator to the contrary, that when the preferred course of action is possible its replacement with some other course of action is not permitted.

Āmidī notes that the indicators that the opposition employs can be countered with indicators that point in the opposite direction, especially Qur'an 59:2 ("Therefore, take heed, you who have eyes"), 42:10 ("And whatever you are at variance on, the judgment concerning it belongs to God"), 7:3 ("Follow

what has been sent down to you from your Lord”), and 17:36 (“And pursue not what you have no knowledge of”). If mujtahids were to submit to the opinions of other mujtahids, they would be neglecting the command to take heed (*fa’tabirū*, an expression that, as we have noted, is taken by some jurists to be a reference to *ijtihād* involving the use of analogy), refraining from adherence to the judgment of God (which amounts to adherence to the indicators of the law as opposed to opinions of mujtahids), abandoning what has been sent down from the Lord (that is, the indicators), and pursuing what they themselves have no direct knowledge of. These commands pertain to those capable of carrying them out, that is to say, the mujtahids. Āmidī also notes that the Prophet, in one of his sayings, issued a command to engage in *ijtihād* (*ijtahidū*).

Finally, the twelfth controversy focuses upon the issue of whether a negative judgment must be based on an indicator.³³ Āmidī includes under the heading of negative judgment both rational and legal judgments. A negative legal judgment is a judgment to the effect that a certain act does not belong in a certain category (obligatory, forbidden, or whatever) or that a certain rule does not apply to a given case. Āmidī mentions no names in connection with this controversy, and we may wonder if it engaged the Muslim jurists on a significant scale. I shall here let a brief mention of Āmidī’s own position suffice. Assuming that the judgment is not intended as a disclaimer of knowledge or sound opinion concerning the case under consideration, then, says Āmidī, the one making the judgment—the mujtahid—must produce an indicator in support of it. The negative judgment is thus, in this respect, to be treated in the same manner as the affirmative judgment, that is, the judgment that affirms a rule of law.

CONSULTATION AND ADVICE: THE MUJTAHID AS MUFTĪ

We may now turn to the section of the *Ihkām* entitled “Concerning *taqlīd*, the muftī, the one who consults the muftī, the matters that admit of consultation, and the issues related thereto.” The primary concern of the section is with the role of mujtahid as consultant in matters of law, as muftī. Consultation (*istiftāʾ*) is essential to the working of the law as a social force, given the fact that the great majority of Muslims lack the qualifications required for *ijtihād*. It is thus the process in which the relative authority of the mujtahid—the authority he exercises over nonmujtahids or commoners—becomes operative. Similar to it, but distinct from it, is a process known in Arabic as *taqlīd*. *Taqlīd* is, as we shall see, a type of consultation, but one that, for Āmidī and likeminded jurists, is insupportable and unacceptable. Although it appears in the title of the section, it is peripheral to the central concern, namely, *istiftāʾ*.

Āmidī defines *taqlīd* as “adherence to the dictum of someone else without an authoritative basis [for doing so].”¹ The literal meaning of *taqlīd* is “adornment with a necklace.” When one adheres to the dictum of someone else without being able to provide evidence that he is required to do so, one adorns or invests the other person with authority. The implication is that one takes it upon oneself to impute authority to him. For those who reject *taqlīd*—and Āmidī is one of them—the term has pejorative connotations. No mortal has any right gratuitously to invest another mortal with authority, since all authority emanates from God. Those who accept *taqlīd*, of course, claim to have the necessary authoritative basis. For them, the investing of another with authority is an exercise of a prerogative established by God himself: it is not gratuitous.

Āmidī’s definition thus, by its inclusion of the phrase “without an authoritative basis,” places *taqlīd* in a category by itself: it is unjustified submission to the opinion of another. He immediately explains what this consists of: any person’s submission to the opinion of a *peer*—the submission of a commoner

to the opinion of another commoner and the submission of a mujtahid to the opinion of another mujtahid. The submission of a commoner to the opinion of a mujtahid is thus not *taqlid*, contrary to the common understanding. It is *istiftā'*. Also distinguished from *taqlid* is adherence to sayings of the Prophet, adherence to the Ijmā^c, and the adherence of a judge to the statement of the trustworthy witness. For all of these acts of adherence to the "dictum of another" (*qawl al-ghayr*) there is a compelling authoritative basis.

I shall in the following pages refer to *istiftā'* as consultation. The purpose of the consultation is to obtain from a mujtahid advice on a particular legal problem. This advice is called *fatwā* in Arabic, a term akin to the *responsum* of Roman law. Since *fatwā* is a well-known term, I shall retain it in these pages. The *fatwā* is the opinion of a mujtahid cast into the form of a *responsum*. In this form, it acquires a special social role distinct from the role that the opinion plays within the personal life of the mujtahid. Just as the opinion *qua* opinion defines the law for the mujtahid himself, so the opinion *qua fatwā* defines the law for nonmujtahids. The principle that opinion binds (*al-zannu wājibu 'l-ittibā'*) thus applies to the *fatwā* as well. Throughout Āmidī's discussion of the *fatwā* there lurks the concept of *ittibā'*, "submission." The consultation of which we are speaking here is thus not a consultation that leaves the consulting person with a take-it-or-leave-it option. Although a commoner is free to choose between different *fatwās* that may be available to him, he must ultimately let his case rest upon one of them. It is unthinkable for a commoner to live a full Muslim life without a dependence upon *fatwās*.

Concerning the giver of *fatwās*, the mufti, Āmidī has nothing more to say than that he must be a mujtahid. The qualifications of the mufti are therefore those of the mujtahid. Since we have considered these in the previous chapter, there is no need to repeat them here.

Who may or may not consult a mufti concerning a given legal problem? Āmidī answers this question with an explication-through-disjunction (*taqsim*) that produces four categories of persons:² the mujtahid who has undertaken his own *ijtihad* on the problem under consideration and arrived at an opinion, the mujtahid who has not yet undertaken his own *ijtihad* on the problem, the commoner who has some of the knowledge required in order to engage in *ijtihad* on the problem but not the full minimal amount that would enable him to lay claim to the status of mujtahid relative to it, and the commoner who is totally devoid of the knowledge required for *ijtihad*. Āmidī notes that the jurists have agreed that the first category of persons may not refer the problem to a mufti. The remaining three categories are debated. Āmidī's own position is that the second category (like the first) may not consult a mufti (this unjustified consultation constituting *taqlid*) and that

the third and fourth categories are both required to consult a muftī and submit to his *fatwā*. In other words, a mujtahid may under no circumstances, according to Āmidī, consult a muftī and a commoner must under all circumstances consult a muftī. *Istiftā'* thus becomes for him nothing more or less than a commoner's consultation of a muftī.

It should be noted that these categories pertain to a particular legal problem. Certain persons—the restricted mujtahids—are qualified to engage in *ijtihād* on some problems but not on others. It is therefore possible that a person may, relative to one problem, be a mujtahid and, relative to another, a commoner.

As for the question of what kinds of questions may be the subject of consultation of a muftī, Āmidī notes that the jurists who accept the principle of consultation agree that questions of law that can be resolved only through *ijtihād*, that is to say, only through opinion and not in an absolute conclusive manner, may be brought to a muftī for resolution. They disagree as to whether questions whose answers lie within the realm of firmly known things may be brought to a muftī. Āmidī maintains that they may not.

The foregoing considerations thus give rise to the following issues.

1. Whether a mujtahid who has not already engaged in *ijtihād* on a particular problem and arrived at an opinion of his own may resolve the problem by consulting a muftī.
2. Whether a commoner who has some of the knowledge required for *ijtihād* but not enough to be a mujtahid must go to a muftī to resolve a problem.
3. Whether a commoner who has none of the knowledge required for *ijtihād* must go to a muftī to resolve a problem.
4. Whether anyone may resolve a question whose answer lies within the realm of known things through consultation.

Āmidī notes that he has already dealt with the first issue in the section of the *Ihkām* on *ijtihād*.³ The second issue preoccupies the first of the controversies in the section presently under consideration, and the third and fourth issues are lumped together in the second of these controversies. Besides these two controversies, six others emerge in Āmidī's account.

We shall deal with these controversies in the order in which Āmidī presents them. The first, as just noted, is concerned with the question of whether questions whose answers lie in the realm of known things may be resolved through consultation. In the first lines of his account Āmidī makes it clear what sorts of questions he has in mind:⁴ questions related to the central foundational verities of revealed religion, that is to say, questions relating to God's existence and to those things that are necessary, possible, and impossible

with respect to him. Āmidī thus narrows down the category of known things rather considerably. These are not questions of law but of theology. I shall therefore not linger on this controversy but shall merely note that, according to Āmidī, the overwhelming majority of Muslim thinkers considered resolution of such questions through referral to an expert to be out of the question. It is a well-known hallmark of Islamic orthodoxy that it insists that the knowledge of the most basic verities is something that all human beings must acquire on their own through reasoning (*nazar*). This reasoning is such that it lies within the capability of all who possess sound minds: it is not a prerogative of theologians such that ordinary people must embrace these verities through submission to the authority of theologians.

Āmidī, incidentally, uses the term *taqlid* in his account of the first controversy, not the term that predominates in his accounts of the remaining issues—*istiftā'*. The reason is clear. He wishes to retain *istiftā'* for a special kind of consultation on strictly legal questions: the consultation of a muftī by a commoner. In the first controversy the concern is with consultation of any kind. In regard to questions relating to the basic verities, no one may consult any other human being: a commoner may not consult a mujtahid, and, most certainly, a mujtahid may not consult a mujtahid. While Āmidī has limited *taqlid* to consultation by a mujtahid of a mujtahid, he seems in his account of this controversy momentarily to have set aside this restricted sense in favor of a broader sense.

Āmidī begins his account of the second controversy with a statement of a thesis:⁶ the commoner, who is not qualified for *ijtihād*, must, even if he has acquired a certain amount of the knowledge required, submit to the opinion of a mujtahid and adhere to his *fatwā*. Thus in a single statement the third and fourth of the four categories of persons mentioned above are said to be under an obligation to submit to the opinion of a mujtahid. Opposing this thesis are certain Mu'tazilis of Baghdād who maintained that even the commoner may accept the opinion of a mujtahid only after he has determined its validity on his own. One can readily perceive the concern underlying this way of thinking. In a community in which there are a plurality of mujtahids and a diversity of opinions regarding the law, on what basis is the ordinary man to determine which mujtahid he should follow? Mainstream thinking was to insist that the ordinary man had only one task to perform: the identification of true mujtahids on the basis of observable influence and prestige. Beyond this, he had no further task except to make a free choice as to which mujtahid he would follow. But some Mu'tazilis clearly considered that this was not enough. While the actual scholarship entailed in *ijtihād* might be left to mujtahids in their role as experts, the ordinary man should possess enough

knowledge to discriminate good *ijtihād* from bad. A mujtahid of great prestige could, presumably, falter on occasion. The ordinary person had to provide his own safeguards against this possibility.

In support of the mainstream position, Āmidī musters arguments from the Qurʾān and the Ijmāʿ, as well as a rational argument. He employs a single Qurʾānic passage, 21:7: “Question the People of the Remembrance, if you do not know.” The command to question, he argues, is addressed to the entire Muslim community. Furthermore, it embraces all questions pertaining to what is not known. Therefore, when any in the community do not know how to resolve a legal problem, they are to question those who know. While the imperative “question” may not unambiguously establish an obligation to question, it establishes at the very least a permission to question; since members of the opposition deny that commoners are permitted to consult muftis, the verse suffices to refute them.

Āmidī establishes Ijmāʿic support for consultation by arguing that the commoners in the early generations of Islam, those of the Companions and Successors, continually sought *fatwās* from mujtahids, and no one objected to this practice, indicating an Ijmāʿic consensus in its favor.

As for the rational argument, this runs as follows. If someone who is not fully qualified for *ijtihād* is required to carry on an independent inquiry whenever he must resolve a legal problem he encounters, that person will be placed under great hardship, considering he must disengage himself from the concerns of making a living, working, waging war, tilling the soil, and so on; this is contrary to the principle that there is no hardship in religion, a principle well attested in the Qurʾān and Sunna (from both of which Āmidī quotes relevant passages).

Nowhere in his discussion does Āmidī provide an argument for an *obligation* to consult muftis, which he and mainstream thought affirm. He himself suggests that such an argument is not needed in order to refute the position of the opposition—that this consultation is impermissible. If one establishes—as Āmidī believes he has done—that the consultation is *at least* permissible, one has won the debate. We can only surmise that he would argue for an obligation to consult muftis by insisting that all men are under obligation to conform to the divine law and that this obligation includes adoption of whatever means are necessary in order to achieve this conformity. Since commoners lack—according to the majoritarian view and contrary to the view of the Baghdad Muʿtazilīs—the qualifications required to form intelligent opinions regarding the law on their own, they are under obligation to resort to the only remaining means of conformity to the law at their disposal—consultation of muftis.

If commoners are indeed required to refer legal problems to mujtahids for solutions, must they know for certain that the particular persons they consult are indeed qualified mujtahids or is it permissible for them to consult persons whose mujtahid status is not known with certainty (third controversy)?⁶ Āmidī's statement of this issue suggests that three possibilities are under consideration: the commoner knows that a particular person is a mujtahid, he knows that that person is not a mujtahid, or he does not know whether he is or is not a mujtahid. If he knows that the person is not a mujtahid, then he most certainly is not permitted to consult him; and if he knows that the person is a mujtahid, he most certainly is permitted to consult him. But what about the middle category? The great majority of jurists, says Āmidī, held that if the mujtahid status of a person is not known to a commoner, the commoner may not consult him. Āmidī argues that if it is not known then the commoner cannot be sure that the person he is thinking of consulting is not on the same level as himself. One may wonder why a few jurists entertained the notion that a commoner could consult in the event of uncertainty about the qualifications of the person consulted. Perhaps they saw the task of distinguishing true from false mujtahids as too demanding for many commoners or envisioned situations—say, in remote villages—where mujtahids of high standing were unavailable. We do not know what lay behind their thinking, since Āmidī does not give us any clues.

Āmidī notes, in his account of this controversy, the manner in which a commoner was expected to ascertain the mujtahid status of a person he intended to consult: by observing that he issues *fatwās* to people in the manner of one authorized to do so (*yarāhu muntasiban li'l-fatwā*) and that people concur in seeking *fatwās* from him and in placing confidence in him.⁷ I noted earlier that the position of mujtahid is not determined by a formal certification process; the question of whether or not one is truly qualified to proceed with the tasks entailed in *ijtihād* can only be resolved subjectively, as can the question of whether one has met the total expenditure of effort test in a particular instance of *ijtihād*. But I also noted that a mujtahid can hardly be effective in his social role without some kind of publicly acknowledged or certified position or status.⁸ It is this position or status that the commoner looks to, according to Āmidī, in deciding whom to consult. A mujtahid need not be socially effective in order to be a mujtahid: his *ijtihād* can, in principle, serve only his own personal needs. But the Muslim community, being made up of a majority of commoners, requires the services of mujtahids, and some mujtahids must therefore perform these services. This is where the role of muftis comes in. Without muftis the community as a whole cannot truly live according to God's law. Thus while the test that an individual scholar uses to

determine whether he is a mujtahid is subjective, the test that a commoner uses to determine whether one he wishes to consult is a mujtahid is not. The commoner relies on the criterion of observable social status and prestige.

The fourth controversy takes up only a few lines in the *Ihkām*.⁹ If a learned person—that is to say, a mujtahid¹⁰—has given a *fatwā* on a particular legal problem that recurs at a later time, is it necessary for him to engage in a fresh *ijtihād* so that he may not simply rely upon his original one? We may perhaps posit a linkage of sorts between this issue and the issue of whether a mujtahid may defer to the *ijtihād* of another mujtahid who has already examined a particular problem, rather than undertaking an *ijtihād* of his own. If a mujtahid engages in *ijtihād* on a particular problem and then, let us say, twenty-five years later is presented with the same problem, must he not reckon with the possibility that, given twenty-five years of maturation and increased learning, a fresh *ijtihād* will produce a different result? Is he not twenty-five years later in some sense a new man?

Āmidī notes simply that the jurists are divided on this issue, mentioning no names. He himself, in formulating his own position, draws a line. If the mujtahid remembers something about the earlier *ijtihād*, he may rely upon it, presumably because he will be reasonably satisfied that it would produce the same result if repeated. However, if he can remember nothing about the earlier *ijtihād*, he must engage in a fresh *ijtihād*.

The fifth controversy is concerned with an issue of great theoretical importance, although Āmidī's treatment of it is in fact rather brief.¹¹ Is it possible that any age can be devoid of a mujtahid who may be entrusted with the task of issuing *fatwās*? The Hanbalis and certain others, says Āmidī, maintain that this is not possible, whereas all remaining jurists—the majority, obviously—maintain that it is possible. Āmidī adopts the majoritarian position. If the absence of mujtahids in any age is impossible, it must be impossible either in and of itself or because of an extraneous indicator. It is clearly not impossible in and of itself, since no absurdity follows from it; since we know of no external indicator that would render it impossible we must presume that no such indicator exists.

Members of the opposition attempt to produce just such indicators. They cite first of all three Sunnaic passages: "The Prophet—upon whom be peace—said, 'Until [the day when] God gives the command and the Antichrist appears there will never be absent from my community a group who possess the truth'; "The Prophet—upon whom be peace—said, 'How I long for my brothers.' They said, 'Are we not your brothers?' He said, 'You are my Companions; my brothers are a people who will come after me fleeing from mountain to mountain with their religion and living righteously

while the [majority of] the people do evil”; “The Prophet—upon whom be peace—said, “The learned are the heirs of the prophets; the community that most deserves this inheritance is this community, and the prophet who most deserves to have heirs for his knowledge is the prophet of this community.”

Āmidī responds by citing sayings of the Prophet that convey an opposite meaning: “Islam was brought into being as something strange, and it will return to the state in which it began”; “God does not take hold of knowledge directly but rather through taking hold of the learned ones so that when no learned person remains the people take to themselves ignorant leaders who are questioned and who give advice based on something other than knowledge; thus they go astray and lead [the people] astray”; “Learn the rules of inheritance and teach them to the people, for they are the first thing that will be forgotten”; “You will indeed ride upon the paths of those who were before you and nothing else than those paths”; “The best age is the age I am in; next comes the age following it; next, the ages following it. After that will remain the scraps [who will be] like the scraps of dates; they will matter little to God.” These sayings, Āmidī notes with his usual forthrightness, directly contradict the sayings quoted by the opposition, canceling out their probative value. Therefore, our original argument stands.

Members of the opposition have a further argument. *Ijtihād* is a duty that rests upon the community (*fard kifāya*) in the sense that someone in the community must discharge it. Therefore, if the entire community neglects this duty, the entire community has gone astray; but this cannot be, since it contradicts the principle of *Ijmāʿ*ic inerrancy. Furthermore, *ijtihād* is the means through which the divine law is understood. If any age is without those who are qualified for *ijtihād*, the divine law has been suspended in that age, contrary to what a great many texts say. Āmidī’s reply: *ijtihād* becomes a communal duty only when the rules of law transmitted from previous generations are inadequate in the presence of novel situations unknown to earlier mujtahids. If conditions remain static and the rules worked out by previous generations are transmitted to the present in a manner that admits of probable authenticity, then a duty to engage in *ijtihād* does not arise and the community has not lapsed into errancy.

Āmidī does not, throughout his account of this controversy, suggest that there has in fact been an age devoid of mujtahids or that the time in which he was living was such an age. The controversy is concerned only with the possibility of a complete absence of mujtahids in any age. Those who deny this possibility are, in effect, affirming that mujtahids necessarily exist in every age, including the present one. Those who affirm this possibility are leaving this further question open. The doctrine that the gate of *ijtihād* was

closed—a doctrine commonly cited by modern Islamicists—seems far from the thinking of all parties to this controversy. The absence of mujtahids in a generation in which old rules sufficed for unchanged conditions did not rule out a return of mujtahids to the scene in a later generation in which old rules no longer sufficed.

May one who is not a mujtahid issue a *fatwā* based on the legal doctrine worked out (through *ijtihād*) by others who are mujtahids? In introducing this question, which occasions the sixth controversy,¹² Āmidī notes that such *fatwās* were being issued in his own time. No doubt he considered it to have been a well-established practice even before his time. In order to gain a full appreciation of what is at issue in the sixth controversy, we must bear in mind the distinction between the unrestricted mujtahid and the restricted mujtahid, noted earlier. A restricted mujtahid was a mujtahid whose competence was limited to certain branches of the law or to the confines of a particular doctrinal school. He was a mujtahid in regard to certain questions of law and a commoner in regard to other questions. He was thus not an ordinary commoner. His scholarly status raised him above the *hoi polloi* of the Muslim community and assured him of some degree of influence and prestige. Could such a person issue *fatwās* on questions for which he had no personal competence but for which he could find an applicable rule within the doctrine of his school, which originated with the school's founder?

Abu'l-Husayn al-Basrī, says Āmidī, held that he may not issue such a *fatwā*, the reason being that it would be based on mere transmission of a rule from an earlier master. Since commoners in general were perfectly capable of memorizing and repeating rules, the allowance of *fatwās* based on transmission of doctrine, not on *ijtihād*, would open the door to handing over the function of giving *fatwās* to the general run of commoners. Mujtahids were not necessarily better memorizers and transmitters than the rest of the Muslim community. In fact, the discussions of *ijtihād* recorded in the *Ihkām* seem to imply that mujtahids are not necessarily more intelligent (although the greatest ones were surely so considered): they are what they are by dint of their acquisition of the necessary knowledge and skills, something that many a commoner must be presumed to have been capable of but unable to realize by virtue of the demands of other vocations necessary for the good of society.

Āmidī defends the giving of *fatwās* by scholars on the basis of the transmitted doctrine of their school by arguing that whole generations of Muslims have accepted this practice and that it is therefore well supported by the Ijmā'. The giving of *fatwās* by the general run of commoners does not have this support. Although Āmidī does not say so, the issue seems to be fundamentally an issue of terminology. Surely in Abu'l-Husayn's time the practice to which

Āmidī refers was in existence, and one can hardly imagine that he would have denied the need for some kind of process whereby old rules of law could continually, generation after generation, be brought to bear upon legal questions that persons uninformed in the law confronted. It appears that some jurists wish to reserve the word *fatwā* for advice involving the propounding of a new rule, directed to novel questions and situations. From Āmidī's earlier definitions, we must conclude that for him this sort of advice constituted the *fatwā* par excellence. In his account of the sixth controversy, however, he shows himself willing to extend the term to the other sort of advice. A certain amount of scholarly skill was required, after all, in the application of existing legal doctrine to a concrete situation. The legal doctrine of a school, and the literature in which it was embodied, could be vast; and, as we noted in the previous chapter, there were certain problems connected with the determination of the authenticity of statements of great masters that could only be dealt with by scholars, not to mention problems of interpretation. Āmidī suggests that the giving of a *fatwā* based on established legal doctrine is not simply a matter of memorization and transmission, although it includes that. It is also a matter of determining the applicability of principles and statements of a great master to concrete situations (*al-tafrī' alā qawā'id al-imām wa-aqwālih*). There is a kind of toil in this effort, but it is not of the sort that falls within the definition of *ijtihād*.

The two final controversies have to do entirely with the one who consults the mufti (*al-mustaftī*), that is to say, the commoner. The seventh controversy takes up the issue of whether a commoner may, if there is more than one mufti in the region where he lives, exercise complete freedom of choice as to which mufti he will consult.¹³ Āmidī includes Ahmad ibn Hanbal among those who maintained that a commoner should not be given such freedom but should be required to engage in an *ijtihād* of sorts in order to determine which mufti was the most pious, the most religious, and the most learned. This is not an *ijtihād* focused upon the indicators of the law, as is the *ijtihād* of the mujtahid. It is rather an *ijtihād* that focuses on the statements of muftis. A commoner should get acquainted with a number of muftis and, when they differ on a particular matter, weigh their statements against each other just as the mujtahid weighs conflicting indicators of the law against each other.

In this, he may take one of two approaches (or both): either he may acquire a modicum of learning on his own in the area of the law to which his question belongs so as to determine which *fatwā* has the greatest ring of truth about it; or he may examine the reputations muftis have in the eyes of others so as to determine which mufti is generally considered to be the most reputable. The first approach suggests that the commoner may move onto

the turf of the mujtahid. It does not mean that the commoner is to achieve scholarly parity with the mujtahid, but only that, given a diversity of *fatwās*, he should attempt *to the best of his ability* (which cannot be as great as that of the mujtahid but should nonetheless be exercised to the fullest possible extent) to determine which *fatwā* has *for him* the greatest ring of truth about it. The commoner, in other words, is an intelligent person, and this intelligence should be engaged in the search for the most reliable *fatwā*. As with the mujtahid, the opinion a commoner arrives at will be fallible—more fallible, by the standards of rigorous scholarship, than that of a mujtahid; but it is this opinion, however fallible, that, having emerged from that total expenditure of effort that is definitive of *ijtihād*, should determine which *fatwā* is to be the law of God for him. A free, random choice of a *fatwā* would seem to give the personal predilections of the commoner too great a role.

Āmidī argues for the opposing point of view, whose adherents include Bāqillānī. There were, he contends, in the generation of the Companions mujtahids who achieved a higher degree of excellence than other mujtahids. This is indicated by such sayings of the Prophet as “The most qualified among you to judge disputes is ‘Alī, the most skilled in the law of inheritance is Zayd, and the most learned on the subject of what is forbidden and what is permitted is Ma‘ādh.” And there were also in the generation of the Companions commoners whose duty it was to submit to opinions of mujtahids. Yet no Companion is reported to have said that the commoners must exercise *ijtihād* as to which mujtahids are the more distinguished; and no one objected when the commoners among them followed the less distinguished mujtahids. If this had not been permissible, the entire body of Companions could not have remained silent. Thus the Companions concurred in their acceptance of complete freedom of choice on the part of the commoner.

The eighth controversy turns out to be a double controversy involving two closely related issues, one of which follows from the other.¹⁴ Āmidī treats each with extreme brevity. The first is whether a commoner who has submitted to the opinion of a mujtahid regarding a particular legal problem may turn to another mujtahid for an opinion on some other problem. The correct position, Āmidī says, is that the commoner may move from mujtahid to mujtahid in the search for advice on different questions: he is not bound to adhere consistently to the doctrine of one mujtahid. This freedom of movement is supported by an Ijmā‘ic consensus of the Companions that is inferred from the fact that none of them are reported to have objected when commoners of their generation consulted different mujtahids on different questions.

But what if a commoner declares, “I belong to the school of so-and-so” (*anā ‘alā madhhabih*)? In that case, says Āmidī, an additional factor has

entered into the situation: the commoner's profession of allegiance to a particular school. If he makes such a profession, he gives up the freedom of movement to which he is entitled and becomes bound in regard to all legal questions that affect him personally to the doctrine of a particular mujtahid. In other words, he is now, by his own declaration, a Māliki, a Hanafī, a Shāfi'ī, a Hanbalī, or an adherent of some other school. However, should he be appointed judge or be a muftī in the special sense noted above, in which case he will be concerned with questions that do not affect him personally, then he ceases to be bound to his own school.

THE WEIGHING OF CONFLICTING INDICATORS

The last of the four principal sections of the *Ihkām*—the fourth *qāʿida*—is the shortest of all (sixty-two pages in the 1914 Cairo edition). It is concerned with a task that is central to the enterprise of *ijtihād*: weighing conflicting indicators of the law. The second *qāʿida* was concerned with the functioning of the single indicator. This functioning, it will be recalled, entailed, in the case of textual indicators, a dependence upon contextual clues such that no single indicator was to be treated in isolation from its context. I have throughout this book spoken frequently of the co-functioning of word and context. Contextual clues are themselves indicators in their own right; indeed, Āmidī often speaks of them as indicators. The mujtahid is therefore always concerned with the working of multiple indicators, which complement each other in guiding the mujtahid to a rule of law.

Indicators not only complement each other; they may also confirm and support each other. When the mujtahid has determined that an indicator before him, whether a textual indicator taken together with its larger context, an analogy, or a logical deduction, supports a particular rule of law, he will then continue his search to determine if there are other indicators that support this rule of law. Particularly, if an indicator establishes only a faint degree of probability, other indicators will be useful in increasing the probability of a rule. The use of indicators to corroborate each other does not form the topic of a separate section in the *Ihkām*. It appears that the Muslim jurists felt no need to discuss it.

Quite the opposite is the case with conflicting indicators. Contradiction between indicators blocks progress toward the formulation of God's law. The indicators are in this case not corroborating each other but are canceling each other out. Therefore, it behooves the mujtahid to weigh the indicators against each other in order to determine which has the greater probative strength. This undertaking is called *tarjih* in Arabic: "determination of preponderance." Whichever of two conflicting indicators proves to be the preponderant one

(*al-rājih*) will take precedence over the other as a basis for the mujtahid's formulation of the law.

If, after a total expenditure of effort on this task, a mujtahid is unable to determine the preponderance of one of the two conflicting indicators, he may, according to some jurists, conclude that the two indicators are equal in respect to their probative force and consider his *ijtihād* to have come to a satisfactory end. This relationship between indicators is called *ta'ādul*, "equality, equilibrium." As we noted in chapter 16 in Part III, not all jurists were willing to allow *ijtihād* to terminate in *ta'ādul*: the toil should, in their view, continue until a determination of preponderance resulted. Those who accepted *ta'ādul*, on the other hand, do not seem to have had a clear view as to just what a mujtahid should do in the face of an equilibrium between contradictory indicators. Were the two indicators co-functioning as a single indicator of a human right to choose freely between contradictory rules? Or did the equilibrium call for a suspension of judgment altogether, leaving the case at hand unresolved?

Whatever their attitude toward *ta'ādul*, all Muslim jurists considered the determination of preponderance to be a necessary task, at least up to a certain point. Since this task did not belong with the subject matter of the other principle sections of the *Ihkām*, it had to be given a *qā'ida* of its own, no matter how brief. Again, we must bear in mind that the medieval Muslim authors organized their writings along strictly logical lines; they were not concerned with maintaining a balance between the various sections and subsections of their works.

The fourth *qā'ida* begins with an introductory section in which Āmidī is concerned with three things:¹ what the term *tarjih* means, why adherence to a preponderant indicator is obligatory, and which indicators are subject to weighing for the purpose of determining preponderance and which are not. *Tarjih*, he explains, refers to "the linking of one of two things that are suited to be used as indicators of a sought-for [rule of law] but that contradict each other to something that requires adherence to it and disregard of the other."²

Once a mujtahid has determined the preponderance of one of two conflicting indicators, he is under obligation, according to Āmidī, to formulate the law on the basis of the preponderant indicator; of course, both he and his followers are under obligation to conform to the rule thus formulated. What constitutes the basis of this obligation? Āmidī's discussion of this question reveals disagreement among the jurists: some (we are not told who) held that it had no viable basis and that it was permissible for a mujtahid to employ an indicator that was not preponderant, thus preserving his freedom of choice among indicators. Āmidī grounds the obligation in an *Ijmā'ic*

consensus of the early generations of Muslims. It is known, he says, that these early Muslims agreed that one is under obligation to give precedence to the one of two conflicting opinions that is preponderant. Anyone who has investigated their activities knows this to be the case. This was also true of their handling of reports concerning the Prophet. For example, reports by ʿĀ'isha were favored over reports of Abū Hurayra because it was felt that ʿĀ'isha's reports were the preponderant ones, because of her more intimate acquaintance with the Prophet's affairs: they outweighed the reports of Abū Hurayra. Moreover, when the Prophet confirmed Muʿādh's intention to observe an order of priority in his treatment of indicators of the law, he was in effect confirming the procedure of determining preponderance. Finally, when one of two indicators outweighs the other in probative strength, rational people customarily deem it an obligation to adhere to the preponderant indicator. And the law must be presumed, in the absence of proof to the contrary, to accord with what is customary among rational people. This is why the Prophet said, "What the Muslims see as good is good with God."

Āmidī turns to the arguments of those who oppose this point of view. Qur'ān 59:2 (*fa'tabirū yā ūlā'l-absār*), they argue, commands us to engage in pondering (*i'tibār*) without qualification;³ in other words, it does not specify the determination of preponderance as the type of pondering that is commanded. The Prophet said, "We judge by the outward appearance [*zāhir*] of things and leave the hidden aspects to God." All indicators, including those that do not enjoy preponderance, fall under the heading of "outward appearance of things." Finally, in a court of law preponderance is not taken into account in the consideration of the testimony of four trustworthy witnesses as against the testimony of two trustworthy witnesses; rather, the testimony of four is treated as equal to the testimony of two, since two is always the decisive number. Indicators function just like the testimony of witnesses; what is true of the latter should be true of them as well.

Āmidī's reply: Qur'ān 59:2 commands us simply to ponder and reason. There is nothing in this that contradicts the notion that one is under obligation to adhere to a preponderant indicator, ignoring the one that is not preponderant. As for the saying of the Prophet, the word *zāhir* refers precisely to what is likely, that is to say, preponderant over something else. It thus does not prove the opponent's point. And it is not the case that the testimony of the four is to be treated as equal to the testimony of the two. (Āmidī here seems to be touching upon a controversy concerning evidentiary procedure.) But even if this was the case, the obligation to adhere to a preponderant indicator in the formulation of the law still has a solid basis in the *Ijmā'*, as noted in the previous paragraph. We know that the early Muslims took preponderance

into account in dealing with conflicting indicators of the law, even if they did not in dealing with conflicting testimonies of witnesses.

Finally, Āmidī turns to the question of what indicators of the law may be subjected to the test of preponderance and what indicators may not. His answer is straightforward and simple. Only those indicators that yield opinion and not knowledge can be subjected to this test. Such indicators are, as noted earlier, classified as *dalīl zannī*, in contrast to *dalīl qatʿī*, the indicator that yields knowledge (or certainty). The opinion-engendering indicator (*dalīl zannī*) is an indicator that, in the collective experience of mujtahids over many generations, has yielded different results with different mujtahids and in consequence is perceived to be intrinsically productive of opinion and nothing higher. The reason for this limitation could be any one of a number of factors: in the case of a textual indicator, it could be uncertainty about the authenticity of the text (that is to say, the reliability of its transmission) or an ambiguity in the language of the text that cannot be resolved with finality through reference to contextual clues; in the case of an analogy, it could be due to any one of the many uncertainties noted in previous chapters.

The *dalīl qatʿī*, on the other hand, is an indicator that undergirds a principle or rule of law on which there is no disagreement (except in moments of aberration), which is consequently perceived to be intrinsically productive of knowledge. This indicator is not, it should be noted, dependent upon the Ijmāʿ for its engendering of knowledge; it does this entirely on its own. We are not here dealing with a *dalīl zannī* that occasions an Ijmāʿic concurrence of opinion, for in this case the Ijmāʿ supersedes the indicator and functions as an indicator in its own right (but not necessarily, Āmidī would say, as a *dalīl qatʿī*). We are rather dealing with an indicator that by virtue of its own probative strength has engendered knowledge and is retained generation after generation, through an unchallengeable transmission process (*tawātur*), as the basis of the knowledge and as a means of inculcating this knowledge in the minds of those who do not possess it. Knowledge by its very nature becomes universal among the learned: the *dalīl qatʿī* is irresistible. And the agreement that emerges in consequence among the learned may not, in this case, be assigned a probative strength of its own. Any reference to the Ijmāʿ as a means of inculcating the knowledge in the minds of the uninformed, given the continuing presence of the indicator itself, would be superfluous.

As a broad category *dalīl qatʿī* embraces not only indicators of the law but also those rational indicators—or proofs—that undergird the basic tenets of theology. Rational indicators that are productive of knowledge are generally presumed, at least among theologians and jurists of Āmidī's ilk, to be far more plentiful than are indicators of the law that are productive of

knowledge. With the exception of the most fundamental duties, such as the five basic acts of worship, the law falls for the most part within the domain of opinion-engendering indicators.

The weighing of knowledge-engendering indicators for the purpose of determining which is predominant is in principle impossible. Since knowledge is monolithic and noncontradictory, the indicators that produce it cannot be in conflict. Where they seem to be, something has gone wrong; and the person who thinks he sees the contradiction will presumably become aware of his shortcoming as he mingles with the learned.

It should be noted, before we proceed further, that as Āmidī continues his discussion of the determination of preponderance he shifts from the common jurisprudential term for indicator, *dalīl*, to a term that appears more commonly in the *Abkār al-afkār*, which was noted in chapter 1—*tarīq* or, to place it within the longer phrase within which it appears, *al-tarīq al-muwas-sil ila'l-matlūb*, “the path that leads to what one is seeking.”⁴ I suggested in the earlier chapter that *tarīq* (often translated as “means”) might be rendered as “instrument.” The indicators are instruments a mujtahid uses in order to arrive at an opinion. In the present discussion, I shall, for the sake of consistency, employ the term “indicator.”

Āmidī divides the opinion-engendering indicators of the law into two categories: those that engender opinion regarding simple (*mufrad*) matters and those that engender opinion regarding composite (*murakkab*) matters, that is to say, synthetic judgments (*tasdiqāt*, an obvious reference to the *ahkām* or rules of law). The latter are none other than the indicators of the rules of law that have been the main concern of our study: the Qur’ānic, Sunnaic, and Ijmā’ic indicators as well as analogy and *istidlāl*; the former are the definitions that mujtahids employ. As we have noted throughout this book, the definition of a term can sometimes be a matter of great controversy, with the parties offering widely differing definitions, and Āmidī frequently offers a definition of his own, not in a dogmatic manner, but as his opinion. Accordingly, definitions must be weighed against each other to determine which is the preponderant one. However, it is the indicators of the rules of law that are of greatest concern in discussions of determination of preponderance, and I shall here confine my reader’s attention to them. Āmidī in any case devotes all but the last three of the remaining pages of the *Ihkām* to them. The brief discussion of the weighing of definitions has the appearance of an appendage to the main discussion, which engaged the Muslim jurists on a much greater scale.

What follows in the remaining pages of the *Ihkām* (minus the last three) is a long and tedious listing of conflicts that may occur between indicators with

a specification of the preponderant indicator in each conflict.⁵ Āmidī divides these conflicts into three main categories: conflicts involving two transmitted or textual (*manqūl*) indicators, conflicts involving two rational (*maʿqūl*) indicators, and conflicts involving a textual indicator and a rational indicator. The term “rational” must be understood here to have a very restricted sense. Āmidī has in mind analogy and those indicators he places under the heading of *istidlāl*. As we have noted, these indicators do not represent a complete break with the texts; they are rather operations of the intellect upon the texts whereby some other rule is derived from a rule present within the meaning of the texts.

Within each one of these main categories, Āmidī then arranges the conflicts between indicators according to a classification of the various types of preponderance. In the case of conflicts involving two textual indicators, the preponderance of one indicator over another may relate to the transmission of the text, to the text itself, to the import of the text, or to something extraneous to the text. In the case of conflicts involving two rational indicators, the conflict may be between two analogies, between two *istidlāls*, or between an analogy and an *istidlāl*. Āmidī is mainly concerned with conflicts between analogies. In these conflicts, preponderance may relate to the principal case or to the novel case; if the principal case, it may relate to the rule governing the principal case or to the occasioning factor behind that rule. Āmidī makes no similar distinctions in regard to conflicts involving a textual and a rational indicator; in any case, he has very little to say about this type of conflict.

Āmidī lists 173 different kinds of conflicts that may arise between indicators. I shall not attempt here to replicate the entire list. Rather, I shall be satisfied to give the reader a general impression of what is entailed in the determination of preponderance by presenting a sampling of conflicts within the two major categories of conflict between textual indicators and conflict between analogies. What follows presupposes that the reader has read certain sections of this book with care. Without such a background, many of these conflicts will be incomprehensible.

With conflicts belonging to the first of these categories, preponderance may, as we have noted, relate to the transmitter of a text.⁶

1. A text with a greater number of transmitters outweighs a text with a smaller number of transmitters.
2. A text whose transmitter is known for his trustworthiness outweighs a text whose transmitter is not known for this quality; or a text whose transmitter is more known for his trustworthiness outweighs a text whose transmitter is less known for this quality.

3. A text whose transmitter is known to have depended more on his memory than on written material outweighs a text whose transmitter is known to have depended more on written material than on memory.

4. A text whose transmitter is known to have conformed to its dictates outweighs a text whose transmitter is known to have acted contrary to its dictates.

5. A text whose transmitter had direct experience of that which the text is about outweighs a text whose transmitter has not had this experience.

6. A text whose transmitter became a Muslim earlier in life outweighs a text whose transmitter became a Muslim later in life.

7. A text whose transmitter is more versed in *fiqh* outweighs a text whose transmitter is less versed in *fiqh*.

8. A text whose transmitter is of well-known ancestry outweighs a text whose transmitter is not.

Or preponderance may relate to the transmission itself, as in the following examples:⁷

1. A text whose authenticity is guaranteed by the scale of its transmission (*al-khabar al-mutawātir*) outweighs a text whose authenticity depends on the trustworthiness of the individual transmitters (*khabar al-wāhid*).

2. A text whose transmission can be traced all the way back to a direct witness (that is, a Companion of the Prophet) outweighs a text whose transmission can be traced back only to a member of the second generation.

3. A text that is transmitted by identifiable transmitters, one from the other, outweighs a text that is simply in circulation but is not accompanied by a chain of such transmitters.

4. A text found in a book that has a wide reputation for reliability (such as the books of Bukhārī and Muslim) outweighs a text found in a book that does not have quite such a wide reputation for reliability (such as the book of Abū Dā'ūd).

5. A text whose transmission is through direct recitation by one transmitter to another outweighs a text whose transmission is through some other means (for example, through study of books, attainment of licenses to recite based on examination, etc.).

6. A text that transmits actual words of the Prophet outweighs a text that transmits the Prophet's meaning but not his words.

Or preponderance may relate to the texts themselves or, to be more precise, to the language of the texts, as in the following examples:⁸

1. A positive command (*if'āl*) outweighs a negative command (*lā taf'āl*).

2. A granting of freedom of action (*mubih*) outweighs a command.

3. An assertion (*khābar*) outweighs a command (which, let us remember, belongs to the category of nonassertoric speech).

4. An assertion outweighs a granting of freedom of action.

5. An expression that has a single literal meaning outweighs a homonym.

6. A *haqīqa*-expression outweighs a *majāz*-expression.

7. A complete expression outweighs an elliptical expression.

8. An expression that is accompanied by an emphasizer (*mu'akkid*) outweighs an expression that is not.

9. Congruent implication outweighs counterimplication.

10. A specific expression outweighs a general expression.

11. A definite plural (for example, "the thieves") outweighs a common noun with definite article (for example, "the thief") as a bearer of general reference.

12. A text that signifies both a rule and the occasioning factor behind it outweighs a text that signifies only a rule.

13. A saying of the Prophet (or saying expressing an Ijmā'ic consensus) outweighs a deed.

14. A saying corroborated by a deed outweighs a mere saying.

15. A text that includes additional matter outweighs a text that omits this matter.

16. A consensus of the entire community outweighs a consensus of mujtahids alone. (The Ijmā', let us remember, is typically embodied in a text.)

17. A consensus of the Companions of the Prophet outweighs a consensus of the following generation.

18. A consensus of a past generation outweighs a consensus of a living generation.

Or preponderance may relate to the import of the texts, that is to say, to what the texts signify in terms of specific legal rules or principles, as in the following examples:⁹

1. A rule that forbids outweighs one that allows freedom of action.

2. A rule that forbids outweighs one that imposes an obligation.

3. A rule that requires more outweighs a rule that requires less.

4. A normative rule takes precedence over a nonnormative rule.

With conflicts between analogies, preponderance may relate to the rule governing the principal case, that is to say, to the original rule, as in the following examples.¹⁰

1. An analogy involving an original rule that is certain outweighs an analogy involving an original rule that is merely probable.

2. An analogy involving an original rule that is agreed not to be abrogated outweighs an analogy involving an original rule whose abrogation is disputed.

3. An analogy involving an original rule upon whose occasioning factor those mujtahids who accept the use of analogy are agreed outweighs an analogy involving an original rule concerning which this is not the case.

4. An analogy involving a probable (*zanni*) original rule that conforms to procedures observed in the use of analogy outweighs an analogy involving a certain (*qat'i*) original rule that does not conform to these procedures.

5. An analogy involving a probable original rule on whose occasioning factor there is agreement outweighs an analogy involving a certain original rule on whose occasioning factor there is disagreement.

6. An analogy involving an original rule based on a nonpreponderant indicator but upon whose occasioning factor there is agreement outweighs an analogy involving an original rule based on a preponderant indicator but upon whose occasioning factor there is disagreement.

Or preponderance may relate to the occasioning factor behind the original rule, as in the following examples.¹¹

1. An analogy involving a certain (*qat'i*) occasioning factor (either because its presence in the principal case is certain or because the indicator that shows that it is the occasioning factor is certain) outweighs an analogy involving a probable occasioning factor.

2. An analogy involving a more probable occasioning factor outweighs an analogy involving a less probable occasioning factor.

3. An analogy involving an occasioning factor that has been ascertained through the method of elimination of alternatives outweighs an analogy involving an occasioning factor that has been ascertained through the test of suitability.

4. An analogy involving an occasioning factor that has been ascertained through the method of elimination of alternatives outweighs an analogy involving an occasioning factor that has been ascertained through the method of concomitance.

5. An analogy involving a determinate occasioning factor outweighs an analogy involving an indeterminate occasioning factor.

6. An analogy involving a simple occasioning factor (including a single feature of a case) outweighs an analogy involving a complex occasioning factor (including a number of features).

7. An analogy involving an occasioning factor that has been ascertained with reference to an objective of the law relating to a universal requirement of human well-being outweighs an analogy involving an occasioning factor that has been ascertained with reference to some other kind of objective.

These and the other conflicts between indicators that I have omitted are for the most part presented to us in the *Ihkām* in a laconic manner with little or

no explanation. We can very well imagine that over many, even most, of them hovered controversy in some degree; yet Āmidī recounts controversies relating only to a few. Part IV of the *Ihkām* leaves us with the distinct impression that it is but an overview of, or introduction to, a vast and complicated field of inquiry within Islamic theoretical jurisprudence. It obliges the reader who wishes to undertake a full exploration of this subject to turn to other sources.

EPILOGUE

One point in particular has been central to this book.¹ In the jurisprudence of Āmidī and his kind (and no doubt in all theocentric jurisprudence), the law of God is not something that presents itself to us as a fully articulated body of rules. It is rather something that must be *searched for*, and this search is essentially a hermeneutical venture that takes the searcher into a vast arena of texts. While the law is not necessarily limited to rules found within the meaning of the texts, the texts are indisputably the bedrock of the system, and rules that do not have some sort of ultimate grounding in the texts—even if it be but a grounding of the procedures involved in the extrapolation of rules from rules—are invalid.

The search for the law in and through these texts is, we have learned, an arduous affair, and those who engage in it must therefore be called “toilers,” mujtahids. First of all, it is not always easy to discern the boundaries of the textual corpus. The Qur’ān may be easily enough defined, but the corpora of authentic Sunnaic and Ijmā’ic texts are not so amenable to clear and decisive delimitation, and the authority of the Ijmā’ is itself somewhat moot. Already, therefore, in the business of mapping out the textual territory to be explored, Muslim dialectic is at work. The interpretation of the texts is, we have seen, equally fraught with challenges—challenges that intensify the dialectic and increase the arduousness of the search. These have to do not only with the vagaries of language but also with methodological issues having to do with the question of what may be included under the rubric of “the texts’ meaning” and what may not as well as with the justification of procedures that carry the searcher beyond the texts’ meaning.

For those Muslim jurisprudents who accept the principle of Ijmā’ic authority, the search for God’s law can come to a final end in those instances where the multiple searches of mujtahids of a particular generation yield one and the same result. Otherwise, the search is in principle endless. True, once a mujtahid has expended maximal effort in his search for a rule of law, he may

cease his searching and authoritatively propound the results as the expression of his learned opinion. But this is not to say that he may not later—perhaps years later—change his mind. If in the course of his ongoing study of the texts (from which he will never as a true mujtahid desist) he happens upon hitherto overlooked indicators that prompt him to question a rule previously formulated, he is free to set aside that rule in favor of a more compelling one. At this point, his search is resumed, and he once again must expend maximal scholarly effort in order to justify another declaration of opinion. But the new result is itself always subject to possible review and reconsideration at a later point.

Furthermore, the dialectic in which the mujtahid is inevitably involved obliges him to view the results of his own searching with due modesty and humility. How can he ever claim finality for his formulations of the law when at least some esteemed peers are bound to see the law differently? How can he ever with assurance consider himself to be definitely right and the others definitely wrong? And if there is no way, in the event of disagreement, to know who is right and who is wrong, a mujtahid must always, no matter how convinced he may be of the validity of a given formulation of the law, entertain the possibility that he may be wrong and that his search may someday have to be resumed.

That the fallible results of a mujtahid's searching—his *fiqh*—can have the force of positive law, especially if his followers are numerous enough to give his doctrine the status of a major school (*madhhab*) and the state is prepared to provide supportive sanctions, should not lead us to suppose that the formation of a particular variety of *fiqh* brings the search for God's law to an end. The transformation of *fiqh* into positive law does not have this kind of decisiveness. The search must always be a search for the ideal law of God, the law represented by the original intended meaning of the texts through which God speaks. *Fiqh* varies from mujtahid to mujtahid, from *madhhab* to *madhhab*, from age to age, but the eternal law of God—of which *fiqh* is only the best approximation of which mujtahids are capable—is invariable and thoroughly self-consistent. The mujtahid must view his own *fiqh* with all due humility, steadfastly keeping his inner eyes fixed upon the ideal law, the true object of his lifetime search. To suggest that the production of *fiqh*—notwithstanding its crucial importance for the life of the muslim in this world—brings the search for God's law to a final end would undoubtedly, for Āmidī, be tantamount to a kind of idolatry, for the mujtahid's all-too-human readings of the texts would be taking the place of the ideal law.

The genius of the jurisprudence expounded in the writings of Āmidī surely lies in the way it combines a frank and realistic awareness of the impossibility

of capturing the ideal law of God in all its fullness within the confines of any human *fiqh* and a sincere belief that *fiqh* can constitute a positive law that is acceptable to God as a means through which true obedience and uprightness may be achieved within communal life. That is to say, it is able to be realistic about the possibilities and limitations of legal hermeneutics while remaining optimistic about the prospects of achieving a righteous social order through law. The crux of its point of view lies in the conviction that the divine Legislator is not so strict as to insist that his creatures live by the dictates of a firmly established original intended meaning. Given the “hiddenness” (*khifāʾ*)—we may, I think, say “elusiveness”—of much, if not most, of this meaning, such a posture on the part of the Legislator would violate a principle that he himself has laid down, one oft-repeated in this book: that the religion of Islam entails no genuine hardship, no requiring of the impossible or next-to-the-impossible. It is thus the will of the Legislator that the formulations of the law that mujtahids arrive at as a result of maximal sincere endeavor should be law for them, whether those formulations correspond to—or are based on—the original intended meaning or not.

The complexity of the hermeneutical venture has been exacerbated in recent times by radical theories that say when readers read texts it is they who create meaning as they go along: the meaning is not there before they start. When this way of thinking is applied to texts upon which the law is based, it amounts to affirming that readers of those texts are not truly being addressed by an addressing authority; rather, they are caught up in monologues of their own. And this in turn amounts to denying the possibility of real encounter in the contemplation of the law, of real obedience in fulfilling its requirements. Āmidī would vociferously object to this radicalism. He would, however, probably agree with James Boyd White’s insistence that the reader is a participant in the creation of meaning.² What a Muslim jurist-prudent can never countenance is the deliberate creation of meaning as humanly contrived meaning. A mujtahid in contemplating the disagreements between him and his peers will attribute these disagreements to the human factor; but he will insist that every meaning must be propounded on the belief that it is the Legislator’s meaning. A meaning is never a mujtahid’s meaning by design, but only by default. Nonetheless, there is an awareness here that the mujtahid in some sense participates in the creation of meaning. Āmidī would readily agree with White’s contention that, however much the reader participates in the creation of meaning, the texts are also involved in a crucial way and thus do in some sense speak to us. The reader/mujtahid is involved, not in a monologue, but in a dialogue with the texts. God does indeed speak to us through the texts, Āmidī would say.

It is striking, I think, that White, in the final pages of a book devoted to the interpretation of legal texts (which he considers to be best understood as a kind of translation) should turn to Muslim law. What he says may, I think, be appropriately quoted in the final pages of this book:

In Muslim law there is only one source of authority, the will of god. This is known to humanity only one way, through the words and acts of the Prophet. These in turn are known only through written texts. . . . Among them there are naturally certain inconsistencies; within them, ambiguities and uncertainties.

In a world driven by the need for certainty, how are these uncertainties to be addressed and tolerated? Mainly by the disciplined scholarly study of the texts and their words, we are told, by the interpretation of one phrase in light of the context created by all other sacred texts. But different scholars, different schools, will necessarily disagree: How is this disagreement to be faced, by the judge applying the law, by the believer trying to follow it?

The traditional Muslim answer has been that all of the several readings of a text are valid, notwithstanding their inconsistency, if they are each reached by a mind diligently engaged, in good faith, in a search for its meaning. The judge, or the believer, can follow any of them and still follow the law; but his choice too must arise from a good-faith search for meaning, within his capacities. A world of difference is thus created; it is kept from the prison-house of "single meanings"—of thinking that meanings translate directly from text to text—by honest attention to language, to particularity of phrase and context; it is kept from the chaos of indifferent relativism—of thinking that nothing can be known or understood, no common values held—by a principle of humility and sincerity, or what I would call the ethic of the translator.³

The texts in which the Muslim aspires to discover God's law are, it must be emphasized, also the texts upon which religious belief is erected, "sacred" texts in which is embodied a special revelation to humankind distinct from whatever truth may be gleaned from the natural order. Herein lies a fundamental contrast between Islamic law and Western law. In the Christian West, law acquired its own autonomous texts distinct from the church's canons: the crowning document was of course the *corpus juris civilis* of Justinian. This separation of the textual foundation of law from special revelation was facilitated by Christian acceptance of natural law. St. Paul had set the tone for Christian thinking by declaring that "the Gentiles who have not the law (that is to say the Mosaic law, given by special revelation) do by nature what the law requires" (Romans 2:14). These words provided a rationale for a Christianized version of natural law theory: in the Christian view, natural law was

God's law, and the human intellect was the receptacle of a general revelation through which God's law—the eternal law, in St. Thomas's parlance—could be known. This baptizing of natural law provided a justification for the reception of Roman law into Western Christendom.

There were, of course, intimations of natural-law thinking in Islam among Muʿtazilīs and, subsequently, among Shīʿīs. But Sunni Islam took a clear position against such tendencies, and neither Muʿtazilīs nor Shīʿīs ever reached the point where they could be predisposed to accord intrinsic validity to autonomous legal texts on the order of the *corpus juris civilis*. Muslims universally, whatever their view of the capacity of the human intellect to discern right from wrong, insisted upon the creature's dependence upon special revelation for guidance. Among those inclined to affirm this human capacity, emphasis had to be placed on the frailty of the unaided intellect: the task of erecting an entire body of law capable of dealing with a seemingly infinite variety of human situations was too great for human beings to undertake without divine aid.

In the West, the existence of an autonomous textual foundation of law facilitated the process of the secularization of law. The medieval Christian could see God's "eternal law" in the *corpus juris civilis*, but the later European did not necessarily have this same vision. The Thomist tradition of course persists to the present time among Roman Catholics, and a secularized natural-law theory has been espoused by some non-Catholic legal philosophers. However, these trends have not represented the order of the day in the modern West. What has prevailed has been a positivistic deference to the sway of the sovereign nation-state and its legislative and judicial processes. In most countries of the European continent, Roman law has been a major source of modern European civil law. But Roman law is no longer law in its own right; it has had to *become* law by being either formally received or admitted piecemeal through legislative enactment.

In the modern Muslim world, the situation has been far more complex. In Europe, once the severance of law from the Christian worldview had taken place, the legal texts could still in large measure be appropriated within new secularist worldviews, and the content of the law could therefore remain largely the same. In the modern Muslim world, the separation of law from religion has been much more of a cultural ordeal. This is because the separation occurred as the result, not of a deliberate secularizing of existing law through removal of its religious trappings, but of a substituting of much of the traditional law with an alien law—one of European provenance—introduced, in some cases imposed, by colonial powers. While the law that was actually in force throughout past centuries may not have been as fully representative of

genuine *fiqh* as theory required, it nonetheless could acquire authority only by being somehow understood to have a grounding in sacred texts. No other way of acquiring authority was possible. If formal jurisprudence could not provide the requisite demonstration of this textual grounding, Muslim political theory, which is well known to have been far more accommodating to the realities of the day while remaining within a frame of reference at least loosely based on the texts, could often do the job.

Since the traditional law of Islam was theoretically rooted in the same texts as the edifice of religious belief, there was no way it could be separated from religion. If a law independent of the monotheistic worldview of Islam was to emerge, it would have to come from an external source, replete with its own authoritative texts. Although scholars occasionally speak of the formal reception—reception by legislative enactment—of European law into Muslim countries, we must bear in mind that the legislative institutions through which this formal reception was accomplished were themselves part of the colonial legacy. More significant, no doubt, are the attempts that have sometimes been made to naturalize European law—or parts of it—by finding justification for it in the sacred texts and methodologies of traditional jurisprudence. The success of this enterprise, which is often subsumed under the heading of *ijtihād*, has probably so far been marginal. For a great many Muslims, the modern law of their countries—or at least much of it—has little compelling authority, lacking as it does a genuine religious foundation. Those who do attribute authority to this law do so, either at the expense altogether of the religious perspective or through a bifurcation of their world into “secular” and “religious” spheres in the manner discussed by Niyazi Berkes. Berkes has made us aware of the distinct character of the “secular” in the Islamic context: it is an intrusion of an alien element into a previously integrated religious view of the social order.⁴

Notwithstanding such accommodations to modernity, habits of mind molded by centuries of interconnectedness between law and religion still abound in the world of contemporary Islam, in many instances finding expression in a demand for radical reform. That Islam should cease to mold the social fabric through law remains inconceivable to millions of Muslims. To the extent that this point of view prevails among today's Muslims, the search for God's law will necessarily have to be resumed. A wholesale return to traditional forms of *fiqh* will not do, and this is frequently recognized by Muslim reformers. If the search is indeed to be resumed, then the theoretical jurisprudence developed by Āmidī and his kind will certainly command attention. This is not to say that a wholesale return to that jurisprudence will solve all the problems. But it will provide an important starting point. The

basic methodological issues that Āmidī deals with in his monumental writings are still alive. The enterprise of deriving law from a body of texts entails a spectrum of perennial issues that must be addressed again and again, from age to age. The contemporary dialectic may not follow exactly the patterns of medieval dialectic, but to a large extent it will stand in the stream of the older dialectic. Fundamental questions about the authenticity of texts, the boundaries of the textual corpus, the relationship between signifier and signified, the accessibility of original intent, the use of logic and analogy, and so on will continue to be asked, even if the answers will sometimes have a distinctly modern flavor.

Surely one of the most fundamental questions that the Muslim world must grapple with as the twentieth century draws to a close is whether the idea of a divine law—not morality merely, but law—can remain viable in the radically different times that lie ahead of us. If the ultimate answer of the majority is no, Muslim thought and belief will necessarily undergo some profound permutations. If the answer is yes, then the search for God's law will go on, and Āmidī's voice will be heard.

NOTES

INTRODUCTION

1. The more usual rendering is, of course, “judgments.” I shall avoid this rendering here, however, because of its ambiguity. In a book about law, “judgment” is likely to conjure up associations with the courtroom in the mind of the reader. *Hukm* can refer to a judicial decision, the judging of a dispute. But its sense in the present context is closer to the judgment that underlies the proposition in logic, the difference being that the judgment that formal logic deals with is a judgment about reality—what is or is not the case—whereas the judgment under consideration here is determinative of reality. The former is subject to evaluation as true or false; the latter is not. In either case, however, categorization—the placement in a category—of a logical subject is involved. The suitability of “categorization” as a translation of *hukm* becomes more apparent when we take into consideration that a *hukm* of this sort may be further described in Arabic as *al-hukm ‘ala’l-fi’l bi-kawnihi kadhā*.
2. A more literal rendering might be “impositional” and “postulative” categories.
3. See “al-Fadāli,” in *Encyclopaedia of Islam*, new ed. (Leiden: E. J. Brill, 1965), 2:727.
4. Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), 3–32.
5. Joseph Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 121–22.
6. For a fuller discussion of this topic, see my “Covenant and Law in Islam,” in Edwin B. Firmage, Bernard G. Weiss, and John Welch, eds., *Religion and Law: Biblical-Judaic and Islamic Perspectives* (Winona Lake: Eisenbrauns, 1990), 71–83.
7. This covenant is the subject of my “Covenant and Law in Islam,” referred to in footnote 6.
8. One frequently encounters in Muslim scholarly literature the active participle *shāri‘*, used as a substantive. Generally the term occurs without the honorific phrases that denote deity. This is because the term may be applied either to God or to the Prophet and therefore does not in itself constitute a designation

of either God or the Prophet. The Prophet is *shārīʿ* in the sense of being the live mediator of the Shariʿa and, for his contemporaries, its empirical source. The Prophet is thus the subject of the Shariʿa in a derivative sense; the true and ultimate subject can be only God.

9. See pp. 687–90.
10. Schacht himself refers to the seminal article by A. A. Schiller, “Jurists’ Law,” *Columbia Law Review* 58 (1958):1226–38. Cf. Schacht, *Introduction to Islamic Law*, 209, 285.
11. See p. 13.
12. *Yudawwin* is Ibn Khaldūn’s term; see his *al-Muqaddima* (Beirut: al-Matbaʿa al-Adabiya, 1900), 454–55.
13. The distinction between these two approaches goes back at least to Ibn Khaldūn. See Ibn Khaldūn, *The Muqaddimah*, trans. F. Rosenthal, 3 vols. (New York: Pantheon Books, 1958), 3:28–29. Various modern Arabic writers have written on it: for example, Muhammad Adib Sālih, *Tafsīr al-nusūs fi’l-fiqh al-islāmī* (Damascus: Matbaʿat Jāmiʿat Dimashq, 1964).
14. My remarks about these works is based on ʿAbd Allāh Mustafā al-Marāghī, *al-Fath al-mubīn fī tabaqāt al-usūliyyīn* (Beirut: Muhammad Amīn Damaj, 1974), a modern compilation of information from medieval bibliographical works covering the field of *usūl al-fiqh*.
15. George Makdisi, “Ashʿarī and the Ashʿarites,” *Studia Islamica* (1962):37–80; (1963):19–39.
16. See pp. 672–76.
17. Ibn Khaldūn, *al-Muqaddima*, 455.
18. The ensuing discussion deals with Sayf al-Dīn al-Āmidī, *Kitāb al-Ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 1:6–10. Hereafter referred to as *Ihkām*.
19. *Al-fiqhu makhsūsun bi’l-ʿilmi ʿl-hāsili bi-jumlatin min al-ahkāmī ʿl-sharʿiyyati ʿl-furūʿiyyati bi’l-nazari wa’l-istidlālī*, *ibid.*, 7.
20. See pp. 624–25, for example.
21. *Al-fiqhu ʿl-ʿilmu bi-hā awi ʿl-ʿilmu bi’l-ʿamali bi-hā banāʿan ʿala ʿl-idrāki ʿl-qatʿi, Ihkām*, 1:7.
22. *Fa-usūlu ʿl-fiqhi hiya adillatu ʿl-fiqhi wa-jihātu dalālātihā ʿala ʿl-ahkāmī ʿl-sharʿiyyati wa-kayfiyatu hāli ʿl-mustadilli bi-hā min jihati ʿl-jumlati la min jihati ʿl-tafsīl*, *ibid.*, 8.
23. See pp. 351ff.
24. The following brief biographical sketch is based on the well-documented account of Hasan Mahmūd ʿAbd al-Latīf, editor of the *Ghāyat al-marām*. See the introduction to Sayf al-Dīn al-Āmidī, *Ghāyat al-marām fī ʿilm al-kalām* (Cairo: al-Majlis al-Aʿlā li’l-Shuʿūn al-Islāmiya, 1971), 8–11.

CHAPTER ONE

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 1:11–15. Hereafter referred to as *Ihkām*.
2. *Ammā ‘ilm’l-kalāmi fa-li-tawaqqufi ‘l-‘ilmi bi-kawni adillati ‘l-ahkāmi mufīdatan lahā shar‘an ‘alā ma‘rifati ‘llāhi ta‘ālā wa-sifātihi wa-sidqi rasūlihi fimā jā’a bihi wa-ghayri dhālika mimmā lā yu‘rafu fī ghayri ‘ilmi ‘l-kalām*, *ibid.*, 9.
3. *Ibid.*, 4:219.
4. For a more thorough and definitive treatment of Muslim epistemology than what follows, the reader should consult Josef van Ess, *Die Erkenntnislehre des ‘Adudaddin al-Ici* (Wiesbaden: Franz Steiner, 1966).
5. *Al-‘ilmu ‘ibārātun ‘an sifatin yahsulu bihā li-nafsi ‘l-muttasifi bihā’l-tamyīzu bayna haqā’iqi ‘l-ma‘āni ‘l-kullīya*, *Ihkām*, 1:15. Āmidī’s definition of knowledge in the *Abkār al-afkār* is slightly different: knowledge is “an attribute through which the mind of him who possesses this attribute attains the discernment of some nonsensible essence in a manner that does not admit of the possibility that it could be different from the way it is [more literally: from the way it has come about].” Sayf al-Dīn al-Āmidī, *Abkār al-afkār fī usūl al-dīn* (Cairo: Arab League Microfilm Collection, no. 2165-66), 1:fol. 2b (hereafter *Abkār*). A bound photocopy of this manuscript is available at the University of Chicago Library, call number BP 166 A53. My translations of Āmidī’s definitions are influenced by Franz Rosenthal’s translations in his *Knowledge Triumphant* ([Leiden: E. J. Brill, 1970], 58, 226). I am omitting the part of the *Abkār al-afkār* definition that Rosenthal places in brackets, which is absent from one of the manuscripts he used. Like Rosenthal, I am under the impression that this part of the definition does not belong in the text (see Rosenthal’s footnote 7 on p. 58). It should be noted that the Berlin manuscript of the *Abkār* contains a much different version of Āmidī’s definition: knowledge is “the occurrence in the mind of the form of an idea in a manner that does not admit of the possibility that it could occur as anything other than what it occurs as.” Thereafter follows the explanation that “occurrence in the mind” refers to a distinguishing of the idea from all else. Thus, even in the Berlin manuscript the notion of “distinguishing” (*tamyīz*) plays a crucial role in the explication of what knowledge is. Van Ess, using the Berlin manuscript, speaks of the *Abkār* as deviating (*abweichend*) from the *Ihkām* in its definition of knowledge; but other manuscripts give the impression that the two works of Āmidī are much closer to each other than this assessment would suggest (*Erkenntnislehre*, 90–91).
6. *Ammā ‘l-zammu fa-‘ibārātun ‘an tarajjuhi ahadi ‘l-ihimālayni fī ‘l-nafsi ‘ala ‘l-ākharī min ghayri qat‘in*, *Ihkām*, 1:15.
7. *Abkār*, 1:fol. 4b–5a.
8. *Ibid.*, 1:fol. 4b.
9. See my “Knowledge of the Past: The Theory of Tawātūr according to Ghazālī,” *Studia Islamica*, 61 (1985):81–105.
10. See pp. 284–89.

11. [Al-nazaru] *‘ibāratun ‘ani ‘l-tasarrufi bi’l-‘aqli fi’l-umūri ‘l-sābiqati ‘l-munāsabati li’l-matlūbi mini ‘l-ma’lūmāti awi ‘l-maznūnāti bi-ta’līfin khāssin li-qasdi tahsili mā laysa hāsilan fi’l-‘aqli mufradan kāna aw murakkaban ‘ilmīyan aw zannīyan sahihan qad waqafa ‘l-nāziru fihi ‘ala wajhi dalālati ‘l-dalil aw fāsīdan*. Sayf al-Dīn al-Āmidī, *Muntahā ‘l-sūl fi ‘ilm al-usūl* (Cairo: Muhammad ‘Alī Sabīh, n.d.), 1:4. Cf. *Ihkām*, 1:13.
12. *Abkār*, 1:fol. 32b–4ob.
13. *Ihkām*, 1:12.
14. *Ibid.*, 11.
15. See pp. 259–60.
16. See pp. 151–54.
17. See pp. 154, 551.
18. See p. 72.
19. See, for example, his *The Rise of Colleges* (Edinburgh: Edinburgh University Press, 1981), 105–52.
20. Larry Benjamin Miller, “Islamic Disputation Theory: A Study of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries” (Princeton University: Ph. D. diss., 1984).
21. Sayf al-Dīn al-Āmidī, *Ghāyat al-marām fi ‘ilm al-kalām* (Cairo: al-Majlis al-A‘lā li’l-Shu‘un al-Islāmīya, 1971), 9:13–15. Hereafter to be referred to as *Ghāya*.
22. *Ibid.*, 38–44.
23. *Ibid.*, 44–45.
24. *Ibid.*, 45.
25. *Ibid.*, 45–51.
26. He calls this the method of *tafsīl*, *ibid.*, 51.
27. *Yaqta’u dābira ahli ‘l-ta’līl*, *ibid.*, 52.
28. See, for example, Qutb al-Dīn al-Rāzī, *Tahrīr al-qawā‘id al-mantiqīya* (Cairo: Mustafā al-Bābī al-Halabī, 1948), 97–100.
29. *Ghāya*, 52–54.
30. *Ibid.*, 54–56.
31. *Ibid.*, 206–7.
32. On the subject of created agency, see Richard M. Frank, “The Structure of Created Causality According to al-Ash‘arī,” *Studia Islamica*, 25 (1966):13–75.
33. *Ghāya*, 224–25.
34. *Ibid.*, 233–35.
35. See pp. 87–88.
36. *Ghāya*, 94.
37. *Ibid.*, 96–97, 107–8.
38. See pp. 121.
39. *Ghāya*, 101–4.
40. *Ibid.*, 96–97.
41. *Ibid.*, 104–7.
42. *Ibid.*, 111.
43. See pp. 155.

44. *Abkār*, 2:fol. 1b-61b. Āmidī does not deal with these categories in the *Ghāyat al-Marām*.
45. *Ghāya*, 315ff.
46. *Ibid.*, 343.
47. *Ibid.*, 342–43.
48. *Ibid.*, 343–45.
49. See pp. 274ff.
50. *Ghāya*, 346–47, 350–52.
51. On the notion of empirical possibility, see pp. 40–41.
52. *Ghāya*, 348–50, 354–60.

CHAPTER TWO

1. See pp. 27–28.
2. See p. 27.
3. *Ihkām*, 1:9–10.
4. See pp. 3, 10–11.
5. *Ihkām*, 1:113.
6. *Ibid.*, 130.
7. *Ibid.*, 114–15.
8. *Ibid.*, 113–14.
9. *Ibid.*, 180–81.
10. *Ibid.*, 119–20.
11. *Ibid.*, 124–30.
12. *Ibid.*, 124–25.
13. *Ibid.*, 126–30.
14. This subject is dealt with at length in my “Covenant and Law in Islam,” in Edwin B. Firmage, Bernard G. Weiss, and John Welch, eds., *Religion and Law: Biblical-Judaic and Islamic Perspectives* (Winona Lake: Eisenbrauns, 1990), 71–83.
15. *Ihkām*, 1:135–36.
16. *Al-lafzu ‘l-mutawāda‘u ‘alayhi ‘l-maqsūdu bihi ifhāmu man huwa mutahayyi’un li-fahmihi*, *ibid.*, 136.
17. *Khitābu ‘l-shār‘i ‘l-mufidu fā’idatan shar‘īyatan*, *ibid.*, 136.
18. Muhammad al-Tahānawī, *Istilāhāt al-‘ulūm al-islāmiya* (Beirut: Khayat, reprint 1966), 403.
19. I have chosen “rendering obligatory” in preference to “obligating” since the latter (in contrast to recommending, disapproving, forbidding) cannot have an act as its object. An act can be recommended, disapproved, or forbidden, but it cannot be obligated.
20. See p. 2.
21. *Ihkām*, 1:137.
22. The notion of calling for something (*talab*) will be dealt with at greater length in Part II, chapter 7 (pp.339–40).

23. *Wujūb*, as I have suggested, becomes virtually synonymous with *ijāb* in Āmidī's usage. This is nowhere more apparent than in this definition of *wujūb*. Tahānawī notes the common belief among Muslim scholars that *wujūb* and *ijāb* are essentially identical: *i'lam anna'l-wujūba wa'l-ijāba muttahidāni dhātān mukhtaliḥāni i'tibāran*. Tahānawī, *Istilāhāt al-ʿulūm al-islāmīya*, 1445.
24. I am here relying primarily on the *Muntahā*: [*Al-wujūb huwa*] *ʿibāratun ʿan taʿalluqi khitābi ʿl-shārʿi bimā tarkuhu sababun liʿl-dhammi sharʿan fī hālatimmā* (Sayf al-Dīn al-Āmidī, *Muntahā ʿl-sūl fī ʿilm al-usūl* [Cairo: Muhammad ʿAlī Sabih, n.d.], 1:23. Hereafter referred to as *Muntahā*). A more literal rendering would be: “Rendering obligatory” is a designation for the relatedness of the addressed speech of the Sharīʿa-giver to that whose nonperformance is, under the terms of the Sharīʿa, a ground for blame in a certain situation. The *Ihkām* has a somewhat different version, the most conspicuous feature of which is the omission of the word *taʿalluq*: *Al-wujūbu ʿl-sharʿīyu ʿibāratun ʿan khitābi ʿl-shārʿi bimā yantahidu tarkuhu sababan liʿl-dhammi sharʿan fī hālatimmā*, *Ihkām*, 1:138–39. The *Muntahā* definition accords with the common definition (but not the one adopted by Āmidī) of *al-hukm al-sharʿī* as: *khitāb allāh al-mutaʿalliq bi-ḥuq al-mukallaf*. See Tahānawī, *Istilāhāt al-ʿulūm al-islāmīya*, 375, and Muhibb Allāh ibn ʿAbd al-Shakūr, *Musallam al-thubūt fī-usūl al-fiqh* (Būlāq: Al-Matbaʿa al-amīriya, 1322 A. H.), 54. My phrase “addressed speech of the Sharīʿa-giver as it relates to . . .” thus accords well with the Muslim usage, capturing, I think, the essential idea behind the phrase *taʿalluq khitāb al-shārʿi bi-*. Āmidī would probably not have been unhappy with the rephrasing of his *Muntahā* definition as *al-wujūbu huwa ʿibāratun ʿan khitābi ʿl-shārʿi ʿl-mutaʿalliqi bimā tarkuhu sababun liʿl-dhammi sharʿan fī hālatimmā*, notwithstanding the reasons he may have given for preferring his phrasing.
25. Here again I am taking the inclusion of the term *taʿalluq* in the *Muntahā* definition as a clue: *al-hazru huwa taʿalluqu khitābi ʿl-shārʿi bi-tarki mā fiʿluhu sababun liʿl-dhammi sharʿan bi-wajhimā min haythu huwa fiʿluhu*, *Muntahā*, 1:27. Cf. the *Ihkām*: *waʿl-hazru fa-huwa khitābu ʿl-shārʿi bimā fiʿluhu sababun liʿl-dhammi sharʿan bi-wajhimā min haythu huwa fiʿluhu*, *Ihkām*, 1:161.
26. *Huwa mā yantahidu fiʿluhu sababan liʿl-dhammi sharʿan bi-wajhimā*, *Ihkām*, 1:161.
27. *Huwa ʿl-matlūbu fiʿluhu sharʿan min ghayri dhammin ʿalā tarkihi mutlaqan*, *ibid.*, 170.
28. Obviously, if “disapproved” is equated with “forbidden,” it ceases to be a distinct category in its own right.
29. The Arabic phrasing is *mā nuhiya ʿanhu nahya tanzīhin la tahrīmin*. The translation of *nahy* is something of a problem, to be dealt with later. See pg. 334.
30. *Ihkām*, 1:174.
31. *Huwa mā dalla ʿl-dalīlu ʿl-samʿīyu ʿalā khitābi ʿl-shārʿi biʿl-takhyīri fīhi baynaʿl-fiʿli wa ʿl-tarki min ghayri badalin*, *ibid.*, 176.
32. *Ibid*, 142–55.
33. See pp. 3–5.

34. See p. 3.
35. *Ihkām*, 1:170–72, 177–78.
36. The reader will perhaps recall that Āmidī, in connection with his explication of “disapproved” (*makrūh*), alluded to a distinction between prohibition in the sense of forbidding and prohibition in the sense of eschewal (*nahy al-tahrīm* and *nahy al-tanzīh*). See above, p. 100.
37. *Ihkām*, 1:173, 180.
38. See pp. 3–8.
39. *Ihkām*, 1:181–90.
40. See pp. 2–3, 11–12.
41. See p. 558.
42. *Ihkām*, 1:191–225.
43. *Ibid.*, 191–206.
44. See pp. 108–09.
45. *Ihkām*, 1:215–22.
46. See pp. 65–69.

CHAPTER THREE

1. I am following here the *Muntahā*, which omits a list, found in the *Ihkām*, of topics supposedly dealt with in the science of the Lughā. The list seems inappropriate since Āmidī deals with only two of the topics listed—*haqīqa* and *majāz*—in the section on Lughā-related postulates; the remaining topics are dealt with later in the *Ihkām*. See Sayf al-Dīn al-Āmidī, *Muntahā ‘l-sūl fī ‘ilm al-usūl* [Cairo: Muhammad ‘Alī Sabīh, n.d.], 1:5 (hereafter referred to as *Muntahā*) and Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwīya, 1914), 1:9 (hereafter referred to as *Ihkām*).
2. See p. 44.
3. See p. 154.
4. See pp. 259ff.
5. See p. 81.
6. *Ihkām*, 1:104–12. Cf. Bernard Weiss, “The Medieval Muslim Discussions of the Origins of Language,” *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 124, no. 1 (1974):33–41.
7. *Ihkām*, 1:122.
8. See pp. 294ff.
9. See pp. 274ff.
10. *Ihkām*, 1:112.
11. See pp. 35–36.
12. *Ihkām*, 1:18.
13. See pp. 65–66.
14. *Ihkām*, 1:20.

15. Bernard Weiss, "A Theory of the Parts of Speech in Arabic," *Arabica*, vol. 23, 1 (1976), 23–36; and "Subject and Predicate in the Thinking of the Arabic Philologists," *JAOS* 105, no. 4 (1985), 605–22.
16. *Ihkām*, 1:21–82; *Muntahā*, 1:5–6.
17. See pp. 118–19.
18. *Hiya 'l-lafzu 'l-musta'malu fīmā wudī'a lahu awwalan fi 'l-lugha*, *Ihkām*, 1:36.
19. *Huwa 'l-lafzu 'l-musta'malu fī ghayri mā wudī'a lahu awwalan fi 'l-lughati limā baynahumā min al-ta'alluqi*, *ibid.*, 38. Āmidī notes that some scholars prefer *al-mutawāda'u 'ala 'sti'mālihi* in place of *al-musta'malu*.
20. See pp. 354, 362ff.
21. See p. 126.
22. *Ihkām*, 1:37–47.
23. See pp. 470–73.
24. See my "Ilm al-wad': Introduction to a Later Muslim Science," *Arabica* 34 (1987):339–56.
25. *Ihkām*, 1:38.
26. *Ibid.*
27. *Ibid.*, 61–63.
28. *Ibid.*, 71–73.
29. *Ibid.*, 48–61.
30. See pp. 164–65.
31. *Ihkām*, 1:24–35.

PART II, INDICATORS

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 1:226–27.
2. *Ibid.*, 12.
3. *Ibid.*
4. *Ibid.*, 227.

CHAPTER FOUR

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 1:228. Hereafter referred to as *Ihkām*.
2. *Ibid.* See also pp. 65ff. of this book.
3. See pp. 78–79.
4. *Ihkām*, 1:241.
5. *Ibid.*, 229–33.
6. *Ibid.*, 238–40.
7. Although in the *Muntahā* Āmidī deals with the issues of *majāz* and non-Arabic expressions in the Qur'an along with the other issues peculiar to the Qur'an (Sayf al-Dīn al-Āmidī, *Muntahā 'l-sūl fī 'ilm al-usūl* [Cairo: Muhammad 'Alī Sabih, n.d.], 1:41–43), in the *Ihkām* he deals with these two issues in the section on linguistic postulates (*Ihkām*, 1:63–71; cf. also 1:241).

8. *Ihkām*, 1:237–38.
9. See Jane Dammen McAuliffe, “Qur’ānic Hermeneutics: The Views of al-Tabari and Ibn Kathir,” in A. Rippin, *Approaches to the History of the Interpretation of the Qur’ān* (Oxford: Clarendon Press, 1988), 46–62.
10. *Ihkām*, 1:233–36.
11. *Ibid.*, 245–56.
12. *Ibid.*, 247–69.
13. *Ibid.*, 272–73.
14. *Ibid.*, 273–80.
15. *Ibid.*, 269–71.

CHAPTER FIVE

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 1:280–82. Hereafter referred to as *Ihkām*.
2. The reader should bear in mind that I have chosen to reflect a strictly legal interest throughout this book and hence have translated the term *hukm* in a manner suited to a discussion of law as opposed to morality. For a discussion of the broader meaning of *hukm*, see pp. 1–8.
3. *Al-ijmā‘u ibārātun ‘an ittifāqi jumlati ahli ‘l-halli wa‘l-‘aqdi min ummati muham-madin fī ‘asrin min al-‘sāri ‘alā hukmi wāqī‘atin min al-waqā‘i‘i*, *Ihkām*, 1:281–82.
4. See pp. 683–90.
5. Schacht’s construction of the development of Islamic law and jurisprudence is summarized in his *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 23–75.
6. See p. 18.
7. On this and related concepts in Shāfi‘ī’s thinking, see N. Calder, “Ikhtilāf and Ijmā‘ in Shāfi‘ī’s Risala,” *Studia Islamica* 58 (1983):55–81.
8. *Ihkām*, 1:282–84.
9. See pp. 40–41.
10. *Ihkām*, 1:284–86.
11. See pp. 255ff.
12. *Ihkām*, 1:286–321.
13. Ignaz Goldziher, *Introduction to Islamic Law and Theology* (Princeton: Princeton University Press, 1981), 50–51.
14. See p. 222.
15. Sayf al-Dīn al-Āmidī, *Muntahā ‘l-sūl fī ‘ilm al-usūl* (Cairo: Muhammad ‘Alī Sabih, n.d.), 1:50–52. Hereafter referred to as *Muntahā*.
16. See p. 37.
17. *Ihkām*, 1:319–21.
18. See pp. 277–78.
19. See pp. 72–79.
20. *Muntahā*, 1:51.
21. *Ihkām*, 1:313.

22. Ibid., 287–313.
23. See pp. 404–5, 408ff.
24. *Ihkām*, 1:313–19.
25. See pp. 274ff.
26. See chapter 6 in Part II.
27. See pp. 698–705.
28. See chapter 17 in Part III.
29. See chapter 8 in Part II.
30. *Ihkām*, 1:321–22.
31. Ibid., 322–26.
32. Ibid., 326–28.
33. Ibid., 328–36.
34. Ibid., 344–48.
35. Ibid., 349–52.
36. Ibid., 352–57.
37. Ibid., 336–44.
38. See pp. 193–94.
39. *Ihkām*, 1:358–60.
40. See pp. 282–83. Cf. pp. 187–88.
41. *Ihkām*, 1:361–65.
42. Ibid., 365.
43. Ibid., 366–74.
44. Ibid., 374–84.
45. Ibid., 379–80.
46. Ibid., 404–05.
47. Ibid., 384–91.
48. Ibid., 391–94.
49. Ibid., 399–405.
50. See pp. 729–38.
51. *Ihkām*, 1:406–7.
52. The situation is thus somewhat like that of the consensus based on an absolutely clear and unquestionably authentic indicator (*dalīl qatʿī*) that is known to the mujtahids. Any authority that may be attributed to this consensus is a derivative of the authority of the indicator; the consensus has no authority in and of itself.
53. See p. 210.
54. George Hourani, “The Basis of Authority of Consensus in Sunnite Islam,” *Studia Islamica* 21 (1964):31.
55. See pp. 687–90.

CHAPTER SIX

1. See above, pp. 44–45.
2. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 2:63. Hereafter referred to as *Ihkām*.

3. Ibid., 69. Āmidī juxtaposes *al-khabar* ‘an *allāh* and *al-khabar* ‘an *al-nabī*.
4. Ibid., 2–13.
5. *Al-khabaru* ‘ibāratun ‘ani ‘l-lafzi ‘l-dālli bi‘l-waḍ‘i ‘alā nisbati ma‘lūmin ilā ma‘lūmin aw salbihā ‘alā wajhin yahsunu ‘l-sukūtu ‘alayhi min ghayri hājatin ilā tamāmin ma‘a qasdi ‘l-mutakallimi bihi ‘l-dalālata ‘ala‘l-nisbati aw salbihā, *ibid*, 12.
6. Bernard Weiss, “Subject and Predicate in the Thinking of the Arabic Philologists,” *Journal of American Oriental Society* 105 (1985):608.
7. *Ihkām*, 2:13–20.
8. Ibid., 17–19.
9. See pp. 65ff.
10. *Ihkām*, 2:20–21.
11. *Tatābu‘u* ‘l-khabari ‘an jama‘atin muḥḍin li‘l-‘ilmi bi-mukhbarihi, *ibid.*, 21.
12. *Khabaru jamā‘atin muḥḍin bi-naḥsihi li‘l-‘ilmi bi-mukhbarihi*, *ibid.*
13. In Āmidī’s usage, *mukhbar* and *mukhbar bihi* (see pp. 271–72) are synonymous.
14. See pp. 273–74.
15. *Ihkām*, 2:37–45.
16. Ibid., 22.
17. Ibid., 22–27.
18. Ibid., 28–34.
19. See pp. 40–41.
20. *Ihkām*, 2:39–41.
21. Ibid., 46–48.
22. *Mā kāna mini* ‘l-akhbāri ghayra muntahin ilā haddi ‘l-tawātur, literally, “any report that does not reach the definition [or boundary] of *tawātur*,” *ibid.*, 49.
23. Ibid., 49–60.
24. Ibid., 60–62.
25. Ibid., 62.
26. Ibid., 63.
27. Ibid., 64–68.
28. Ibid., 68–100.
29. Ibid., 75–100.
30. See pp. 717–21.
31. See pp. 226–28.
32. See p. 201.
33. *Ihkām*, 2:100–108.
34. Ibid., 110–17.
35. See pp. 214–16.
36. *Ihkām*, 2:117–20.
37. Ibid., 121–22.
38. Ibid., 122–23.
39. Ibid., 124–28.
40. Ibid., 128–30.
41. Ibid., 130–34.

42. Ibid., 135–45.
43. Ibid., 135.
44. Ibid., 135–36.
45. Ibid., 136–37.
46. Ibid., 137–39.
47. Ibid., 139–40.
48. Ibid., 140–41.
49. Ibid., 141–46.
50. Ibid., 146–51.
51. Ibid., 151–54.
52. Ibid., 154–56.
53. Ibid., 160–64.
54. See pp. 173–78.
55. *Ihkām*, 2:169–77.
56. Ibid., 177–87.
57. Ibid., 164–67.

CHAPTER SEVEN

1. See p. 26.
2. *Mā yashtariku fihi 'l-kitābu wa'l-sunnatu wa'l-ijmā'u*, Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fi usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 2:188. Hereafter referred to as *Ihkām*.
3. *Mā yashtariku fihi 'l-kitābu wa'l-sunnatu dūna ghayrihimā min al-adillati*, *ibid.*, 3:146.
4. *Kullu wāhidin min hādhihi 'l-usūli 'l-thalāthati immā an yadulla 'ala 'l-matlūbi bi-manzūmihi aw lā bi-manzūmihi*, *ibid.*, 2:188.
5. *Huwa mā dalālatuhu lā bi-sarihi siġhatihi wa-wad'ihi*, *ibid.*, 3:90.
6. See pp. 144–46.
7. See pp. 107–8.
8. A more literal rendering of the question as Āmidī puts it would be: what the noun “command” signifies as a *haqīqa*-expression. As his discussion of the question proceeds, it soon becomes clear that it is a question of whether the noun “command” is a *haqīqa*-expression for two meanings or just one. This way of phrasing the question translates into the phrasing I have adopted. The reader should bear in mind that to ask whether an expression is a *haqīqa*-expression for a certain meaning is tantamount to asking whether that meaning is the expression’s literal meaning.
9. *Ihkām*, 2:188–98.
10. Ibid., 198–205.
11. Abu'l-Husayn al-Basrī, *Kitāb al-mu'tamad fi usūl al-fiqh* (Damascus: Institut Français de Damas, 1964), 49ff. Āmidī himself in one passage says *al-talab mustad'in li'l-fi'l*, “the *talab* calls for an act.” This is tantamount to saying *al-talab huwa istid'ā li'l-fi'l*, “the *talab* is a calling for an act,” *Ihkām*, 2:209.

12. *Al-amru talabu 'l-fi'li 'alā jihati 'l-isti'lā'i*, *Ihkām*, 2:204.
13. *Al-qawlu 'l-muqtadī tā'ata 'l-ma'mūri bi-fi'li 'l-ma'mūri bihi*, *ibid.*, 203.
14. *Hal li 'l-amri sīghatun takhussuhu wa-tadullu 'alayhi dūna gharyihi fi 'l-lughati*, *ibid.*, 205. The phrase “as its literal meaning” in my English rendering of this question accurately represents what Āmidī means by “signifies” in this discussion, as the larger context makes clear.
15. *Ibid.*, 205–7.
16. *Ibid.*, 207–74.
17. *Ibid.*, 207.
18. See pp. 137–38.
19. See pp. 121–27.
20. See my “*‘Ilm al-Wad’*: Introduction to a Later Muslim Science,” *Arabica* 34 (1987):339–56.
21. See pp. 253–55, 294.
22. *Ihkām*, 2:207–9.
23. See pp. 126–27.
24. *Ihkām*, 2:209–25.
25. *Al-fi'lu 'l-matlūbu lā budda wa-an yakūna fi'luhu rājiḥan 'alā tarkihi*, *ibid.*, 209. It is instructive to note that Āmidī later in referring back to the second issue, restates it as follows: *anna sīghata if' al... hal hiya zāhiratun fi'l-wujūb awi'l-nadb aw mawqūfatun*, *ibid.*, 261–62.
26. See pp. 470ff.
27. See pp. 107–8.
28. *Ihkām*, 2:210.
29. See pp. 197–98.
30. *Ihkām*, 2:212–24.
31. See pp. 107–8.
32. *Ihkām*, 2:224–26.
33. Sayf al-Dīn al-Āmidī, *Muntahā 'l-sūl fi 'ilm al-usūl* (Cairo: Muhammad 'Alī Sabīh, n.d.), 2:6–7.
34. *Ihkām*, 2:260–63.
35. Several examples of Āmidī's use of the term *zāhir* in connection with this issue may be found in *ibid.*, 230. It is apparent from this usage that *al-amru 'l-'ariyu 'ani 'l-qarā'ini muqtadin li'l-takrār* is interchangeable with *sīghatu if' al zāhiratun fi'l-takrār*.
36. *Ibid.*
37. *Ibid.*, 226–28 and 130–34.
38. *Ibid.*, 230.
39. *Ibid.*, 235–41.
40. See pp. 555ff.
41. *Ihkām*, 2:242–50.
42. *Ibid.*, 251–56.
43. *Ibid.*, 243.
44. *Ibid.*, 256–60.

45. Ibid., 262–66.
46. Ibid., 267–69.
47. Ibid., 269–71.
48. Ibid., 271–74.
49. Ibid., 274–86.
50. Ibid., 275–82.
51. Ibid., 282–84.
52. Ibid., 284–86.
53. See pp. 98, 102.

CHAPTER EIGHT

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 2:286–287. Hereafter referred to as *Ihkām*.
2. *Al-cāmmu huwa 'l-lafzu 'l-mustaghriqu li-jamrī mā yasluhu lahu*, ibid., 286.
3. *Al-cāmmu huwa 'l-lafzu 'l-wāhidu 'l-dāllu min jihatīn wāhidatīn 'alā shay'ayni fa-sā'idan*, ibid., 287.
4. Abū Hāmid al-Ghazālī, *al-Mustasfā min 'ilm al-usūl*, (Būlāq: Amiriya, A.H. 1324), pt. 2, 32.
5. *Hāshiyat al-Taftazānī 'alā sharh al-Ījī li-mukhtasar Ibn al-Hājib*, ed. Sha'bān Muhammad Ismā'īl (Cairo, al-Kulliyāt al-Azhariya, 1973), pt. 2, 100. Cf. Muhammad al-Tahānawī, *Istilāhāt al-'ulūm al-islāmiya* (Beirut: Khayat, reprint 1966), 1068–71.
6. *Al-cāmmu huwa 'l-lafzu 'l-wāhidu 'l-dāllu 'alā musamayayni fa-sā'idan mutlaqan ma'an. Ihkām*, 2:287.
7. Ibid., 288–89.
8. The term *madhkūr* is, of course, often used in Arabic texts in the sense of “the aforementioned.” However, as I can find nothing in the preceding lines in the *Ihkām* that Āmidī could be referring to, I am proceeding on the assumption that this is not the sense of the word here.
9. See pp. 133.
10. *Ihkām*, 3:2–3.
11. *Al-nakiratu fī siyāqi 'l-ithbāt*, ibid., 2.
12. *Al-lafzu 'l-dāllu 'alā madlūlin shā'rīn fī jinsihi*, ibid.
13. Ibid., 290.
14. *Ikhtalafa 'l-'ulamā'u fī ma'na 'l-'umūmi: hal lahu fī 'l-lughati sīghatun mawdū'atun lahu khāssatun bihi tadullu 'alayhi am lā*, ibid., 2:293.
15. See pp. 342.
16. Āmidī's own phrasing of the question, let it be remembered, was: “Does the concept of general reference have in the Lughā a form that was assigned to it and that is peculiar to it, signifying it [and nothing else]?”
17. *Ihkām*, 2:210–11.
18. See pp. 360–62.
19. *Ihkām*, 2:294–302, 305–19.

20. *Maʿqūl* may perhaps have the sense of “what is understood from an expression,” meaning what is understood by a rational member of the linguistic community upon hearing a particular expression uttered by a speaker. Arguments that are *min al-maʿqūl* are thus arguments that appeal to the *maʿqūl* as thus described.
21. *Ihkām*, 2:303–4, 319–21.
22. *Ibid.*, 304, 322–23.
23. See pp. 147–50.
24. *Ihkām*, 2:304–5, 323.
25. See pp. 108–9.
26. *Ihkām*, 2:416.
27. *Ibid.*, 330–38.
28. *Ibid.*, 338–44.
29. *Ibid.*, 400–403.
30. *Ibid.*, 379–83.
31. *Ibid.*, 386–93.
32. *Ibid.*, 393–96.
33. *Ibid.*, 407–10.
34. *Taʿrīfun anna ʿl-murāda biʿl-lafzi ʿl-mawdūʿi liʿl-ʿumūmi haqīqatan innamā huwa ʿl-khusūs*, *ibid.*, 3:409.
35. See pp. 490ff.
36. *Ihkām*, 2:459–86.
37. See pp. 274–84.
38. See pp. 230–32.
39. See especially *Ihkām*, 2:471.
40. *Ibid.*, 465–66.
41. *Ibid.*, 3:3.

CHAPTER NINE

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 3:9–11. Hereafter referred to as *Ihkām*.
2. Āmidī makes no mention of the speaker’s intention in his definition. However, it is clear from his discussion that the signification (*dalāla*) of which he is speaking is a signification of intended meaning. Āmidī and other writers in medieval Islamic jurisprudence use the word “signify” (*yadullu*) somewhat ambiguously. Often—perhaps usually—they have in mind signification by virtue of primordial assignment. They are thus able to say, for example, that a word signifies two or more literal meanings, or that a word, in addition to signifying a particular literal meaning, frequently signifies a nonliteral meaning. In certain contexts, however, they have in mind signification of a meaning intended by the speaker. Signification of this kind is, obviously, signification of one meaning only, whether one of several literal meanings or a nonliteral meaning as against a literal meaning (or vice versa). A word can have several significations of the former kind but only one of the latter kind.

3. *Mā lahu dalālatun ‘alā ahadi amrayni lā mazīyata li-ahadihimā ‘ala’l-ākharī bi’l-nisbati ilayhi*, *ibid.*, 3:11.
4. *Ibid.*, 11–14.
5. See pp. 402–7, 424.
6. *Ihkām*, 3:28–30.
7. *Ibid.*, 14–17.
8. *Ibid.*, 23–26.
9. See pp. 362ff.
10. *Ihkām*, 1:248.
11. *Ibid.*, 3:26–28.
12. See pp. 142–43.
13. *Ihkām*, 3:28–31.
14. *Ishkāl* is not on the agenda of subjects dealt with in a systematic manner in the *Ihkām*. It is, however, among the basic concepts of the science of theoretical jurisprudence (*usūl al-fiqh*). One can get an idea about Āmidī’s own conceptualization of *ishkāl* from *ibid.*, 1:237.
15. *Ibid.*, 3:31–34.
16. *Ibid.*, 34–36.
17. See pp. 170–72.
18. *Ihkām*, 3:36–39.
19. See pp. 173–78.
20. *Ihkām*, 3:39–41.
21. *Ibid.*, 41–66.
22. According to Āmidī, Abu’l-Husayn says the same thing of abrogation: the Legislator can be counted upon to give an immediate indication that the verse in question will be abrogated but may wait until later to supply the details. Three other Mu’tazilis (Jubbā’ī, Abū Hāshim, and ‘Abd al-Jabbār) are said to have regarded delay as possible only in cases of abrogation. Since Āmidī distinguishes abrogation from elucidation, we are apparently to conclude that these individuals regarded delay of elucidation as categorically impossible. In cases of abrogation, they apparently did not distinguish between detailed and vague indications: even a vague indication could be delayed.
23. *Ibid.*, 66–67.
24. *Ibid.*, 67–68.
25. *Ibid.*, 68–70.
26. *Ibid.*, 70–72.
27. See pp. 438–43.
28. *Ihkām*, 3:72–75.
29. One may, of course, speak in English of both a plain meaning and a plain expression (or plain language). But “plain,” in my judgment, does not work nearly so well as “apparent” as a translation of *zāhir*. As for “literal,” this clearly does not work, since a word may, according to my usage, have two literal meanings but only one apparent meaning. I have reserved “literal” for a meaning considered solely as a meaning to which a word has been primordially assigned, a

meaning in relationship to which a word is *haqīqa*. “Apparent” applies to apparent *intended* meaning.

30. *Mā dalla ‘alā ma‘nan bi’l-waḍ‘i ‘l-asliyi awi ‘l-‘urfīyi wa-yahtamilu ghayrahu ihtimālan marjūhan*, *ibid.*, 73.
31. *Al-ta‘wīlu huwa hamlu ‘l-lafzi ‘alā ghayri madlūlihi ‘l-zāhiri minhu ma‘a’htimālihi*, *ibid.*, 74. The *zāhir minhu* is especially significant: the apparent meaning is a meaning that “appears from the expression.”
32. See pp. 134ff.
33. See pp. 144–47.
34. *Ihkām*, 3:75–76.
35. *Ibid.*, 76–89.
36. See pp. 439–40.

CHAPTER TEN

1. For a fuller discussion of the distinction between these two aspects of the texts—the *manzūm* and the *ghayr manzūm*—see above, pp. 330–32.
2. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 3:90. Hereafter referred to as *Ihkām*.
3. *Mā fuhima min al-lafzi fī ghayri mahalli ‘l-nutqi*, *ibid.*, 93.
4. The key statement to this effect is *anna mustanada fahmi ‘l-hukmi fī mahalli ‘l-sukūti ‘andi ‘l-qā’ilina bihi innamā huwa ‘l-nazaru ilā fā’idati takhsīsi mahalli ‘l-nutqi bi’l-dhikri dūna ghayrihi*. Loosely translated, this means, “The basis of the understanding of the implied meaning [here specified to be a rule of law] is nothing other than consideration of what the speaker intends to convey [his *fā’ida*] by saying only what he says, leaving the rest unsaid” (*ibid.*, 101). We shall explore the import of this statement further in what follows.
5. *Ibid.*, 94–99.
6. Wael Hallaq has provided a more detailed study of these operations in his “Nonanalogical Arguments in Sunni Juridical Qiyas,” *Arabica* 36 (1989):286–306.
7. Others have applied to this type of implication the term *argumentum e contrario*. See Hallaq, “Nonanalogical Arguments.”
8. *Ihkām*, 3:99–101.
9. Here Āmidī uses the term *fā’ida* rather than *maqṣūd* to designate the speaker’s overall purpose. Since he includes congruent implication along with counter-implication in his discussion, it is clear that *fā’ida* has the same sense as *maqṣūd* in the earlier passage.
10. *Ibid.*, 102–26.
11. *Ibid.*, 127, 133–34.
12. *Ibid.*, 136, 139, 141.
13. *Ibid.*, 140–41.
14. *Ibid.*, 143–44.
15. *Ibid.*, 2:451–52.

16. Ibid., 3:144–47.

CHAPTER ELEVEN

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 3:147–57. Hereafter referred to as *Ihkām*.
2. *Al-naskhu 'ibāratun 'an khitābi 'l-shār'i 'l-mān'i min istimrāri mā thabita min hukmi khitābin shar'iyyin sābiqin*, ibid., 155.
3. See pp. 93–94.
4. *Ihkām*, 3:157–61.
5. Ibid., 161–63. The present discussion of this subject presupposes a familiarity on the part of the reader with chapter 8 in Part II of this book.
6. See pp. 93–94.
7. *Ihkām*, 3:164.
8. Ibid., 165–79.
9. Ibid., 179–92.
10. Ibid., 192–93.
11. Ibid., 195–96.
12. Ibid., 196–201.
13. Ibid., 201–5.
14. Ibid., 205–8.
15. John Burton, *The Collection of the Qur'ān* (Cambridge: Cambridge University Press, 1977).
16. *Ihkām*, 3:201–2.
17. See pp. 441–45.
18. *Ihkām*, 3:226–29.
19. Ibid., 229–31.
20. Ibid., 231–35.
21. Ibid., 212–17.
22. Ibid., 217–26.
23. Amidī's format can easily give the impression that these arguments are meant to demonstrate that actual instances of the abrogation under consideration do not occur in the law, not that such abrogation is theoretically impossible. That they are in fact meant to demonstrate the latter is evident from closer inspection of the arguments. It should be noted that Āmidī, in dealing with the issue of whether instances of this abrogation actually occur, shows the arguments for their occurrence to be weak, thus suggesting that his own stance is a non-committal one. Here, however, he is doing more than showing the weakness of arguments: he is refuting them as a partisan in a debate.
24. Ibid., 209–12.
25. Ibid., 235–37.
26. Ibid., 238–39.
27. Ibid., 240–43.
28. Ibid., 243–54.

29. See pp. 490ff.
30. *Ihkām*, 3:254–57.
31. *Ibid.*, 257–58.
32. *Ibid.*, 258–61.

CHAPTER TWELVE

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 3:261–76. Hereafter referred to as *Ihkām*.
2. My translation is quite free. A more literal translation might be: “the linking of one thing to another in respect to one of the rules governing it, the ground for this linking being some sort of likeness between the two things.”
3. *Al-istiwa’u bayna ‘l-far’i wa’l-asli fī ‘l-illati ‘l-mustanbatati min hukmi ‘l-asli*, *ibid.*, 273.
4. *Ibid.*, 273–76.
5. *Ibid.*, 273, 277.
6. See pp. 98, 102. Cf. pp. 3–5.
7. *Ihkām*, 3:278–87.
8. *Ibid.*, 288–358.
9. I have deliberated over my use of the word “obtain” on this and the following pages as much as over any other word in this book, having carefully considered a number of alternatives. My usage of this word is, I think, amply confirmed by *The Oxford English Dictionary* (“to be in force; to hold good, subsist, exist”) and *Roget’s Thesaurus* (“subsist, stand, obtain, hold, prevail, be the case”). The usual Arabic counterparts are *thubūt* and *wujūd*.
10. *Ihkām*, 3:288–89.
11. *Ibid.*, 289.
12. *Ibid.*, 290–95.
13. See pp. 470–73.
14. *Ihkām*, 3:331–36.
15. *Ibid.*, 346–48.
16. *Ibid.*, 348–49.
17. *Ibid.*, 315–31.
18. *Ibid.*, 338–40.
19. *Ibid.*, 349–50.
20. *Ibid.*, 306–11.
21. *Ibid.*, 340–44.
22. *Ibid.*, 344–46.
23. *Ibid.*, 295–301.
24. *Ibid.*, 350–53.
25. *Ibid.*, 359–63.
26. See pp. 486ff.

CHAPTER THIRTEEN

1. See pp. 482–83.
2. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 3:364. Hereafter referred to as *Ihkām*.
3. Ibid., 364–66.
4. Ibid., 366–68.
5. Ibid., 368–70.
6. Ibid., 370–73.
7. Ibid., 373–74.
8. Ibid., 374–75.
9. Ibid., 375–76.
10. Ibid., 376–78.
11. Ibid., 380–87.
12. Ibid., 388–89.
13. *Al-munāsibu ‘ibāratun ‘an wasfīn zāhirin mundabitin yalzimu min tartibi’l-hukmi ‘alā wafqihī husūlu mā yasluhu an yakūna maqsūdan min shar’i dhālika’l-hukmi*, ibid., 388–89. My translation of the phrase *min tartib al-hukm ‘alā wafq-ihī* as “from the rule’s becoming operative in conjunction with its presence” is influenced by Taftāzānī’s rephrasing it as *thubūt al-hukm ma’ahu fī’l-mahall* (Taftāzānī, *Hāshiya ‘alā Sharh ‘Adud al-Dīn li-Mukhtasar al-Muntahā al-usūli* [Cairo: Maktabat al-Kulliyāt al-Azhariya, 1973], 2:242).
14. *Ihkām*, 3:389–90.
15. Ibid., 391–93.
16. Ibid., 393–96.
17. Ibid., 396–404.
18. Ibid., 404–5.
19. Ibid., 405–11.
20. The Arabic is *al-qismu ‘l-awwalu an yakūna ‘l-shārī‘u qad i’tabara khusūsa ‘l-wasfī fī khusūsi ‘l-hukmi wa-‘umūma ‘l-wasfī fī ‘umūmi ‘l-hukmi fī aslin ākhar*, ibid., 406. In the ensuing discussion Āmidī drops the terms *khusūs* and *umūm* in favor of *‘ayn* and *jins*. These latter terms are somewhat more illuminating, although this section of the *Ihkām* is extraordinarily difficult.
21. Ibid., 411–23.
22. My phrasing of the second point takes considerable liberties with the Arabic original: *fa-idhā ra’aynā hukman mashrū’an mustalziman li-amrin maslahiyyin fa-lā yakhlū immā an yakūna dhālika huwa ‘l-gharadu min shar’i ‘l-hukmi aw mā lam yazhar lana ... fa-lam yabqa illā an yakūna mashrū’an li-mā zahara*, ibid., 412–13. I have tried to interpret this statement in such a way as to integrate it with other key statements of Āmidī, such as his definition of “suitable.” It seems to me that the phrase *idhā ra’aynā hukman mashrū’an* refers to the discovery of a rule of law in the texts and that the phrase *mustalziman li-amrin maslahiyyin* is parallel to the phrase *tartib al-hukm ‘alā wafqihī*, which appears in Āmidī’s definition of “suitable” and elsewhere. I have already explained that this latter

phrase has the sense of *thubūt al-hukm ma'ahu*. The term *amr maslahī* quite clearly refers to a feature of a case. The *Muntahā* replaces it with *amr munāsib*, suggesting that *maslahī* and *munāsib* are synonymous. (Cf. Āmidī's use of the phrase *wasf maslahī*, *ibid.*, 396 and elsewhere.) It also seems to me that the term *gharad* here has the sense of *bā'ith*. In other words, Āmidī is saying that, given that a rule of law is textually attested as having become operative in conjunction with the presence of a certain feature of the case that possesses the quality of suitability, then either this feature is the factor that occasions the establishment of the rule or something that is not apparent to us is the occasioning factor. As we have noted earlier, a thing is *bā'ith* only if it is connected with an objective or rationale.

23. *Ibid.*, 412–14.
24. *Ibid.*, 414–23.
25. I have made my selection on the basis of Āmidī's abridgement in his *Muntahā 'l-sūl fī 'ilm al-usūl* (Cairo: Muhammad 'Alī Sabīh, n.d.), 3:23–25.
26. *Ihkām*, 3:423–27.
27. *Ibid.*, 427–28.
28. *Ibid.*, 428–30.
29. *Ibid.*, 430–34.
30. Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad 'Abduh and Rashid Rida* (Los Angeles: University of California Press, 1966), 71.

CHAPTER FOURTEEN

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 4:5–31. Hereafter referred to as *Ihkām*.
2. *Ibid.*, 25.
3. See p. 22.
4. *Al-ta'abbudu bi'l-qiyāsi huwa an yūjiba 'l-shār'i'u 'l-'amala bi-mūjabihī* (Taftāzānī, *Hāshiya 'alā Sharh 'Adud al-Dīn li-Mukhtasar al-Muntahā al-usūlī* [Cairo: 1973] Muktabat al-Kulliyāt al-Azharīya, 2:248).
5. "If God was to say, 'I have forbidden *khamr* because it intoxicates,' and there had come from him no *ta'abbud bi-qiyās al-nabidh 'alayhi*..." Sayf al-Dīn al-Āmidī, *Muntahā 'l-sūl fī 'ilm al-usūl* (Cairo: Muhammad 'Alī Sabīh, n.d.), 3:36.
6. *Ihkām*, 4:17.
7. *Ibid.*, 31–72.
8. See pp. 196–97.
9. See pp. 216–19.
10. *Ihkām*, 4:72–82.
11. *Ibid.*, 82–86.
12. The *Ijmā'* thus in this case took the form of a tacit consensus. A fuller reference to this use of analogy by 'Alī occurs above, p. 646.
13. See pp. 642–43.
14. *Ihkām*, 4:86–89.

15. Ibid., 89–90.
16. Carl Brockelmann, *Geschichte der Arabischen Literatur* (Leiden: E. J. Brill, 1937), suppl. 1, 678.

CHAPTER FIFTEEN

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidiwiya, 1914), 4:163–72. Hereafter referred to as *Ihkām*.
2. Wael Hallaq, “Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence,” *Arabica* 37 (1990):315–58. I wish to thank Professor Hallaq for making a copy of this article available to me prior to publication.
3. See p. 23.
4. *Ihkām*, 1:12.
5. As noted in chapter 8 in Part II some jurists, including Āmidī, did not consider the form of expressions such as “all intoxicants” as warranting a presumption in favor of an intended general reference to all members of the class in question. However, Āmidī does allow that when such an expression occurs within a syllogism it has a contextually indicated general reference.
6. *Ihkām*, 4:172–86.
7. To state the difference between the two points of view in a manner more in line with Āmidī’s own language: one group held that a distinction (*tafriqa*) should be made between uncertainty about whether the state of purity has been initiated and uncertainty about whether the state of purity continues to exist in the moment when the prayer is about to be performed, whereas the other group (Mālik et al.) rejected this distinction. The former said that in the event of the first type of uncertainty the performance of the prayer is not permitted, while being permitted in the event of the second type of uncertainty. The latter held that the performance of the prayer is not permitted in the event of either type of uncertainty.
8. That is to say, the generation following the successors to the successors to the Companions of the Prophet (*tābi’ū ‘l-tābi’in*).
9. Here we can see that a nonplenary consensus, while not carrying the authority of the Ijmā’, nonetheless plays an important role in Muslim dialectic. Whenever two or more dialecticians are in debate, they explore areas of agreement in order to concentrate on areas of disagreement. The complementarity of consensus and disagreement (*ijmā’/khiḷāf*) thus operates both on a community-wide, or plenary, scale and on a parochial scale. Only the plenary consensus carries, however, the authority of an infallible indicator of the law, as noted in chapter 5 in Part II.
10. Ibid., 186–200.
11. Ibid., 201–9.
12. Āmidī’s Arabic is ambiguous: *ashāb abī hanīfa wa-ahmad ibn hanbal* could mean either “the associates of Abu Hanifa and of Ahmad ibn Hanbal” or “the associates of Abu Hanifa and Ahmad ibn Hanbal,” it being unclear whether only *abī*

hanīfa is *mudāf ilayhi* or both *abī hanīfa* and *ahmad ibn hanbal*. Since *istihsān* is usually associated with Hanafīs, I am assuming that the former is the case. However, considering that *istihsān* can mean a variety of things, some acceptable to non-Hanafīs, others not, it is perhaps possible that in some circles of jurists in Āmidī's time the Hanbalīs had a reputation for accepting *istihsān*. As we shall soon see, *istihsān* as defined by certain jurists was acceptable to all schools. We can suppose that some Hanbalīs regarded this acceptable form of *istihsān* as an indicator in its own right, distinct from other categories of indicators, whereas the others—the majority—did not.

13. Ibid., 209–15.
14. Malcolm Kerr, *Islamic Reform* (Los Angeles: University of California Press, 1971), 89.
15. *Mā sārū ilayhi*: literally, “what they proceed toward.”
16. See p. 231.
17. *Ihkām*, 4:215–17. See also pp. 615–20.

CHAPTER SIXTEEN

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 4:218–22. Hereafter referred to as *Ihkām*.
2. *Istifrāghu 'l-was'i fī tahqīqi amrin min al-umūri mustalzimin li'l-kulfati wa'l-mashaqqati*, ibid., 218. I am taking *mustalzīm* to be in apposition with *tahqīq*.
3. *Istifrāghu 'l-was'i fī talabi 'l-zanni bi-shay'in min al-ahkāmī 'l-shar'iyyati 'alā wajhin yuhassu min al-naḥsi 'l-ajzu 'ani'l-mazīdi fihi*, ibid., 218.
4. See p. 16.
5. For a brief characterization of the theological part of the journeying toward God's law see p. 79.
6. See p. 201.
7. Those indicators are here called *madārik*, “those things through which the law is perceived,” rather than *adilla*.
8. The Arabic phrase is *muta'abbid bi'l-ijtihād*. For a discussion of the use of the related term *ta'abbud* in the *Ihkām* see the opening pages of chapter 14 in Part II.
9. *Ihkām*, 4:222–35.
10. Ibid., 235–38.
11. See p. 50.
12. See pp. 210, 252.
13. *Ihkām*, 4:239–44.
14. It should not be necessary to point out to the reader familiar with classical Arabic usage that the phrase *mukhalif millat al-islam*, “one who opposes the Islamic millet,” does not denote opposition to the Ijmā'. Although there is a conceptual connection between opposition to the *milla* and opposition to the Ijmā', the two cannot be simply equated. As we learned earlier, the determination of the existence of an Ijmā'ic consensus can itself be a matter of opinion. Not so the

determination of what constitutes those basic verities that are constitutive of the *millā*.

15. Āmidī notes that this view presupposes that truth is to be defined as correspondence between an affirmation and what is actually the case, not between an affirmation and what is merely believed to be the case. Truth is thus to be distinguished from sincerity. See above, p. 272.
16. *Ihkām*, 4:244–45.
17. See p. 290.
18. *Ihkām*, 4:246–64.
19. This is in essence the principle of *istishāb*, which was discussed in the previous chapter.
20. See p. 312.
21. See chapter 15 in Part II.
22. *Ihkām*, 4:282–90.
23. See pp. 230–32.
24. *Ihkām*, 4:290–94.
25. See pp. 167, 208–10.
26. *Ihkām*, 4:265–69.
27. See p. 101.
28. *Ihkām*, 4:269–73.
29. *Ibid.*, 273–74.
30. *Ibid.*, 274–82.
31. *Ibid.*, 297. See also pp. 717–20.
32. See pp. 668–72.
33. *Ihkām*, 4:294–97.

CHAPTER SEVENTEEN

1. *Al-ʿamalū bi-qawli 'l-ghayri min ghayri hujjatin mulzimatin* (Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. [Cairo: Dār al-Kutub al-Khidīwiya, 1914], 4:297 [hereafter referred to as *Ihkām*]). *Mulzima*, I believe, has *al-ʿamal* as its object. What is lacking is an authoritative indicator that requires one to adhere to the dictum in question. *Hujja mulzima* could, I think, be replaced with *dalil mulzim*, without any change in meaning.
2. *Ibid.*, 299.
3. See pp. 711–15.
4. *Ihkām*, 4:300–307.
5. *Ibid.*, 306–10.
6. *Ibid.*, 311–12.
7. Although Āmidī could have in mind appointment to the office of mufti by the ruling authority, I am inclined to think that he does not have this in mind and have therefore adopted a different interpretation.
8. See pp. 689–90.
9. *Ihkām*, 4:312–13.

10. In this section of the *Ihkām* the terms ‘ālim and *mujtahid* are clearly interchangeable.
11. *Ibid.*, 313–15.
12. *Ibid.*, 315–16.
13. *Ibid.*, 316–18.
14. *Ibid.*, 318–19.

PART IV, THE WEIGHING OF CONFLICTING INDICATORS

1. Sayf al-Dīn al-Āmidī, *Kitāb al-ihkām fī usūl al-ahkām*, 4 vols. (Cairo: Dār al-Kutub al-Khidīwiya, 1914), 4:320–24. Hereafter referred to as *Ihkām*.
2. *Ammā ‘l-tarjīhu fa-‘ibāratun ‘an iqtirāni ahadi ‘l-sālihayni li’l-dalālati ‘ala’l-matlūbi ma’a ta’ārudihi mā bimā yūjibu ‘l-‘amala bihi wa’l-ihmāli ‘l-ākhar*, *ibid.*, 320.
3. As we noted earlier, this verse is also used to support the use of analogy. Here it seems to be taken to refer to *ijtihād* in general.
4. See p. 42.
5. *Ihkām*, 4:324–88.
6. *Ibid.*, 325–30.
7. *Ibid.*, 330–34.
8. *Ibid.*, 336–51.
9. *Ibid.*, 351–58.
10. *Ibid.*, 366–70.
11. *Ibid.*, 371–84.

EPILOGUE

1. Portions of this epilogue have been adapted from my “Law in Islam and in the West: Some Comparative Observations,” in *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little (Leiden: E.J. Brill, 1991), 239–53.
2. James Boyd White, *Heracles’ Bow: Essays on the Rhetoric and Poetics of the Law* (Madison: University of Wisconsin Press, 1985), 77–106.
3. James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: The University of Chicago Press, 1990), 267–68.
4. This is a major theme of his *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964).

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